

ELIMINATING THE SOCIAL SECURITY DISABILITY BACKLOG

HEARING BEFORE THE COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS FIRST SESSION

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ELIMINATING THE SOCIAL SECURITY DISABILITY BACKLOG

TUESDAY, MARCH 24, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:37 a.m., in room 1100, Longworth House Office Building, the Honorable John S. Tanner [Chairman of the Subcommittee on Social Security] presiding.

[The advisory of the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON INCOME SECURITY AND FAMILY SUPPORT

FOR IMMEDIATE RELEASE
March 17, 2009
SS-1

CONTACT: (202) 225-9263

Congressmen Tanner and McDermott Announce a Joint Hearing on Eliminating the Social Security Disability Backlog

Congressman John S. Tanner (D-TN), Chairman, Subcommittee on Social Security, and Congressman Jim McDermott (D-WA), Chairman, Subcommittee on Income Security and Family Support, today announced a joint hearing on the Social Security Administration's (SSA's) large backlog in disability claims and other service delivery declines, including backlogs in program integrity activities. **The hearing will take place on Tuesday, March 24, 2009 in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:30 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

In recent years, SSA's backlog of claims for Social Security and Supplemental Security Income (SSI) disability benefits has reached unprecedented levels, with more than 1.3 million Americans currently awaiting a decision on their case. The problem is particularly severe at the hearings level, where the backlog has more than doubled since 2000—from about 310,000 to more than 765,000—and the average waiting time is now almost 500 days.

These backlogs have resulted from years of underfunding as SSA's workload increased due to the aging of the population and additional responsibilities given to the agency. Resource shortages have also led to service delivery declines in other areas. SSA has significantly cut back on program integrity activities such as continuing disability reviews and SSI redeterminations, even though these activities have been demonstrated to generate considerable savings, as much as \$10 in program costs for every \$1 in administrative expenditures. In addition, service to the public has declined in SSA's field offices, as noted in a January 2009 report from the Government Accountability Office (GAO), and the backlog problem is of such severity that GAO included it in its biennial "high risk" list of federal programs.

In the past two years, Congress has provided additional funding to begin to address these problems, and SSA has begun to implement a plan to eliminate the hearings level backlog by 2013. However, the agency continues to face new challenges. Disability and retirement claims are increasing due to the economic downturn in combination with demographic changes. From FY 2008 to FY 2009, initial disability claims are projected to increase by more than 12 percent and retirement claims by more than 8 percent, and both are expected to increase even further in FY 2010 and FY 2011.

Finally, two provisions designed to increase access to professional representation for disability claimants are scheduled to expire during the 111th Congress; and legislative proposals have been offered relating to the disability determination process, such as changing how claimants give consent to release medical records.

In announcing the hearing, Social Security Subcommittee Chairman Tanner said, **“Today thousands of Americans with severe disabilities must wait months—and sometimes years—to receive benefits. We are committed to ensuring that the Social Security Administration is on top of this problem and receives the resources it needs to eliminate the huge backlog in disability claims. We must also ensure the agency has the necessary resources to handle increased workloads associated with the economic recession, perform program integrity reviews, and provide the highest-quality service to the American people.”**

Income Security and Family Support Chairman Jim McDermott said, **“Far too many of our most vulnerable elderly and disabled citizens are waiting too long to get the benefits that they deserve and are entitled to under the law. Congress has responded to this crisis by providing the Social Security Administration with increased funds in order to begin to actively address this problem, but it is time for the agency to take more action to significantly reduce the waiting period before an individual gets the benefits and services they need, while also ensuring the integrity of the process. I look forward to hearing about the initiatives that the agency is taking to address this problem and what additional steps Congress can take to help.”**

FOCUS OF THE HEARING:

This hearing will focus on SSA’s large backlog in disability claims. The Subcommittees will examine the impact of the backlog on applicants with severe disabilities and SSA’s plans for eliminating the backlog, including how the agency intends to use the additional funding that Congress has provided for the current fiscal year. The hearing will also examine the impact of resource shortages on other agency responsibilities, including SSA’s substantial backlog in program integrity activities, and SSA’s plans for addressing these challenges. The hearing also provides an opportunity for comment on legislative proposals or expiring provisions relating to disability determination.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “Committee Hearings”. Select the hearing for which you would like to submit, and click on the link entitled, “*Click here to provide a submission for the record.*” Once you have followed the online instructions, complete all informational forms and click “submit” on the final page. **ATTACH** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business **Tuesday, April 7, 2009**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word or WordPerfect format and **MUST NOT** exceed a total of 10 pages, including attachments. Witnesses and sub-

mitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov>

Chairman TANNER. If we could, please, come to order.

This is a joint Subcommittee—the Subcommittee on Social Security and the Subcommittee on Income Security and Family Support—hearing this morning to talk about the backlog that all Americans know about with regard to Social Security disability claims, as well as looking at the ability from the resource standpoint to reevaluate people who have been on disability and who may have improved to the point where their case needs to be reevaluated.

Mr. Johnson, who is the Ranking Member on the Social Security Committee, is going to be arriving soon. He has been in Texas, I understand. He is coming back.

So we welcome Mr. Linder.

I will try to keep my opening statement short, and I would hope that the other Members could see their way clear to do as well.

We will be talking about a lot of numbers today. But, you know, behind the numbers are real people with real problems out there across the country who are waiting sometimes over a year.

In my case, in Tennessee, it is an average waiting time—in Memphis, it is 16 months; in Nashville, it is a little more than that, 18 months; and all of us have anecdotal experiences with constituents who have been waiting to the point that many of them have died actually while waiting on an evaluation of their claim. So as we go through these numbers, I think it would be wise for us to keep in mind that there are real people out there that are in need, and so we will look at all of those questions that I have outlined.

The prepared statement of Mr. Tanner follows:

Opening Statement of Chairman Tanner
Joint Hearing on Eliminating the Social Security Disability Backlog
March 24, 2009

This joint hearing focuses on an issue that has been a top priority of the Social Security Subcommittee for several years: the Social Security Administration's (SSA's) huge backlog of disability claims.

As Members of Congress, we have heard about this crisis repeatedly from our constituents. And in the last few years, the problem has become so acute that it has been widely covered in news stories across the nation. Time after time, we learn of severely ill individuals who face dire, even tragic circumstances while they endure lengthy waits – often extending three years or more – to receive desperately-needed benefits.

In my own state of Tennessee, the Memphis hearing office has a waiting time of more than 16 months – the national average – and waiting times at the Nashville hearing office are even worse, about 18 months.

Sometimes it takes even longer. A constituent of ours in Carroll County was first logged into SSA's system on January 17, 2007, and finally got a hearing less than two weeks ago – 26 months later. A Tipton County resident requested a hearing in November 2006 and is scheduled to finally get a hearing next month – 31 months later. In Gibson County, a constituent requested a hearing in December 2006 and still doesn't know when the hearing will be, because SSA employees in the Nashville hearing office have not had an opportunity to start working on that case at all.

In fact, the backlog problem is so severe that the U.S. Government Accountability Office has included it on its "high risk" list of federal programs. Today's hearing complies with House Resolution 40, which amended the Rules of the House to strengthen accountability and oversight of federal programs.

Congress and SSA began to work together in the last Congress to turn this unacceptable situation around. Since adequate funding is absolutely critical to reducing wait times, in the past two years, Congress has provided SSA with the additional funds needed to begin to address the problem. SSA has made reducing the disability claims backlog a top priority, and implemented a wide-ranging backlog reduction plan that we will hear more about today.

Because of the size of the backlog, however, eliminating it will require a multi-year effort. In addition, SSA has recently been faced with new challenges. Retirement and disability claims have increased steeply due to the economic downturn, on top of the previously-anticipated increase as the baby boomers age. The *American Recovery and Reinvestment Act* provided SSA with some of the funding needed to process these increased claims, but adequate funding in the FY 2010 appropriations process remains critical to allowing SSA to keep up with the increased claims and still make progress in reducing the backlog. We were pleased to see that President Obama recognized the importance of this issue in his budget request for SSA.

SSA's resource shortages have also led to troubling declines in other areas. As the agency has focused on reducing the disability claims backlog, it has been forced to cut back on important program integrity activities that have been proven to save taxpayer money. For example, SSA periodically reviews disability beneficiaries to determine if they still meet the strict medical criteria to qualify for benefits.

While 95 percent are found to be still eligible, about 5 percent are found to have medically improved enough that they no longer qualify.

These reviews are very cost-effective, saving as much as \$10 in benefit costs for every administrative dollar spent on the reviews, but due to resource shortages SSA has fallen far behind in conducting them. We owe it to the taxpayers to ensure that this problem is fixed, and fixed soon. In FY 2009, for the first time in several years, SSA is receiving funding expressly dedicated for program integrity reviews, and we were pleased that President Obama's FY 2010 budget again includes dedicated program integrity funding. We are committed to ensuring that SSA continues to receive the funding needed to enable the agency to provide effective stewardship over its programs.

SSA's resource shortages have also led to declines in service to the public in field offices across the country, as documented in a recent report by the Government Accountability Office, and we will hear more about this today as well.

As we in Congress work to secure adequate funding for SSA, we must also ensure that these funds are spent wisely and in a way that will be most effective at improving service to the public. SSA's productivity has been continually increasing in recent years, and we applaud the agency for its ongoing attempts to become more efficient by improving business processes and using technology more effectively.

At the same time, SSA must also be mindful of striking the proper balance between efficiency and meeting the needs of taxpayers and beneficiaries. It must ensure that efficiency measures do not harm the quality of decision-making, infringe on due process rights, or compromise good service to the public. In addition, while we all would like to see staff time saved through technological innovations, it is important that SSA not assume that fewer staff are needed before those innovations have been tested and proven to be effective. This has been an ongoing concern.

We want to salute the agency's dedicated workers, several of whom are testifying before us today. SSA's employees have a long and distinguished tradition of service. They have worked tirelessly to serve the people who need their help, despite severe staffing shortages. We want to recognize their dedication and service to our country and also thank them for working so closely with the Congressional staff who work on SSA cases. The dedicated staff workers in our Congressional offices in the 8th District work very hard to help constituents understand and navigate the SSA hearing process. I know the other Members on the committee also have dedicated staff working on these issues every day on behalf of their constituents, and we commend them for their contributions.

The issues we are addressing today are not problems that affect Democrats or Republicans. These backlogs impact constituents in every Congressional district with no regard to whether their district is represented by a Member in the majority or in the minority. For that reason, I want to thank Ranking Member Sam Johnson for his leadership on this issue – and Chairman McDermott and Ranking Member Linder for working with us to address these concerns.

Today we will hear from a range of witnesses about the measures SSA is taking to address its service delivery challenges, and what is working and what is not. We look forward to hearing their perspectives.

Chairman TANNER. So, at this time, I would ask Mr. Linder if he has any opening comments.

Mr. LINDER. Thank you, Mr. Chairman.

Today's hearing is really about two things. The first is the large backlog in Social Security and SSI disability claims and efforts to reduce it. That is a big problem, which we should work to fix.

The second and the long-run, more important thing this hearing is about is the plummeting credibility of our ability to propose solutions for this country. There seems to have been adopted the axiom

that anything that is wrong can be fixed by a big government program. We are here to talk about one that is failing, and we expect to vote this year on a government-run healthcare system that will also fail.

I have a suggestion for our guests and viewers. Take the press release announcing today's hearing and substitute the words "healthcare service" for Social Security disability wherever they appear. The title of the hearing would be Eliminating the Health Care Service Backlog; the background would discuss how the backlog of claims for healthcare services has reached unprecedented levels and focus on the hearing would be on the large backlog in healthcare services.

The reality is that the backlogs and ultimately rationing of services plaguing Social Security's disability claims system will be repeated or worse in a government-run healthcare system. To deny that is to deny the existence of problems that we will hear about today. Only the backlogs of the future won't just mean people don't get disability checks on time. It will mean people will die waiting for treatment or after receiving inadequate treatment.

I ask unanimous consent to insert in the record an article published last week about one hospital in England where between 400 and 1,200 more people died than would have been expected in a 3-year period at the National Health Service hospital. This led Prime Minister Gordon Brown to apologize to all of those who have suffered from the mistakes that have been made.

[The information follows:]

Mr. LINDER. Some mistakes the article notes is how visitors saw patients drinking out of flower vases. They were thirsty.

I would like to remind you that about 30 years ago, the British National Health Service approved the use of administrative failure as an acceptable cause of death for a death certificate.

Today's hearing is a cautionary tale for those who think a government-run healthcare system will efficiently deliver medical services in a timely fashion. It won't. If the government cannot adequately serve the 2.6 million Americans who annually apply for disability benefits today, what makes us think it will provide adequate healthcare services to 300 million Americans tomorrow? Those who trust in this Congress to allocate just the right amount of social policy medicine to cure what ails us deserve the poor service they will surely get.

Last, let me point out that the two largest budget problems that we face as a Nation are Social Security and Medicare. Need we create more? Will the same Congress that has, in the unanimous opinion of today's testimony, underfunded Social Security's disability process be generous with the government healthcare bureaucracy or its doctors, nurses, and specialist employees? What is the evidence of that? There is none.

Thank you, Mr. Chairman.

Chairman TANNER. Thank you, Mr. Linder.

Mr. Johnson has arrived. So, Mr. Johnson, you are recognized, sir.

Mr. JOHNSON. Thank you, Mr. Chairman, and congratulations. I look forward to the good work we can accomplish together.

I also want to welcome our new Members, our colleagues from the Income Security and Family Support Subcommittee. We all share a real concern about the delays our constituents face when they visit or contact a local Social Security office, call the 800 number or wait over 16 months for a decision in their disability appeal before an administrative judge.

Mr. Astrue, I know you have done good work to try to fix that. At the same time, efforts to address program waste, fraud, and abuse have been curtailed, costing billions in improper payments, while reducing taxpayer confidence that their hard-earned tax dollars will provide the services they pay for and deserve.

This Committee has worked on a bipartisan basis to obtain needed funding for the Social Security Administration. In the last 2 years, Congress sent an additional \$275 million to the agency, above the President's request. In the economic stimulus plan, Social Security received an additional \$1 billion for a new computer center and to help process a growing number of applications for retirement and disability benefits.

Now it is time for you guys to step up and account for how the money is going to translate into real results. In the short term, Social Security must answer their phones, reduce the wait times for people in local Social Security offices, and tell people sooner whether their application for Social Security benefits has been granted or denied at all levels in the process.

Whether Social Security can get the job done depends in large part on our having state-of-the-art computers driven by the latest proven software. Far from state-of-the-art, Social Security's main computer systems are stuck in the past. Social Security's main database still operates using 1950's technology, including COBOL programming language. Social Security is working to replace this language, but that project is not estimated to be completed until 2014.

Last year, we learned the agency's 30-year-old computer center will be unable to carry its load after 2012. We are not so far from there. In the meantime, a second data center has been built in Durham, North Carolina, to run some of the agency's daily work and temporarily step in to keep basic operations running if needed. However, Durham is not going to be fully operational until 2012. They may not be able to cover all the agency's computing needs, at the same time now facing the difficult task of purchasing a new computer center using the \$500 million they just received.

Going forward, Social Security cannot get this wrong. So I would like the Commissioner to tell us his plan for maintaining agency computer operations while finishing the Durham data center and building a new computer center.

I hope we can solve this problem, because we are worried to death about some disaster befalling that building and the only site that contains information goes defunct.

I thank our witnesses for being here today and look forward to hearing their testimony.

Thank you, Mr. Chairman.

Chairman TANNER. Thank you, Mr. Johnson.

I would like to now ask Dr. McDermott, who is the chairman of the Subcommittee on Income Security and Family Support, for his statement and then—

Mr. MCDERMOTT. Thank you, Mr. Tanner, for including us in this hearing.

There are nearly six million disabled individuals who wait for SSI to provide them with a helping hand. This program really serves as a safety net to provide very modest cash assistance and medical coverage through Medicaid programs to those who have little or no income or assets.

Disability benefits, either through Supplemental Security Income or Social Security programs, serve as a lifeline really for a number of people. The cash assistance and the healthcare coverage provided to these individuals gives them the help that makes it possible for them to make ends meet.

Now, many are not in a position to wait months to receive a decision on their eligibility for assistance, particularly those with very limited resources who are seeking assistance through the SSI Program. You can imagine the clamor we would have if we had this kind of wait in our unemployment insurance. Yet, today, the average waiting time to secure a hearing for a disability claim at SSA is roughly 500 days, 16½ months. That is simply unacceptable. There must be a better way to serve the American public.

To be fair, the Social Security Administration has operated in an insufficient funding level, as you heard, for a number of years. The agency did not have the resources it needed to keep pace with the normal volume of applications for assistance in Social Security and SSI, much less respond to rising claims that are associated with the aging of the baby boomers.

The agency has received new responsibilities as part of the Medicare Modernization Act of 2003 and the Medicare Improvements for Patients and Providers Act of 2008. As a result, SSA has experienced severe staffing shortages, which led to a decline, actually, in service delivery.

In response, the Committee has worked with our colleagues on the Appropriations Committee over the last 2 years to provide SSA with additional funding to allow them to begin to reduce the disability backlog; and the American Recovery and Reinvestment Act provided the agency with additional funds to address the recent increase in workload.

We will continue to work with our colleagues and the Administration to assure the agency has the resources it needs to respond to individuals who need care. But it is now time for the agency to take bold steps to expeditiously reduce the length of time that a disability claimant must wait for a hearing, and it is imperative that this is done in a manner that firmly upholds the program's integrity so that benefits are only given to those who are eligible to receive them.

It is also critically important that, while SSA adheres to all the necessary program integrity measures, it remains mindful of the precarious circumstances facing a disabled applicant who is awaiting a decision on its application. Many go hungry or lose their homes as they wait for a hearing and subsequent decision. Others go without desperately needed medical assistance and prescription

drugs as they wait. And others see their health and medical conditions deteriorate. All of us in our district offices see these cases on a human basis.

Meanwhile, a significant number of these applicants will eventually be determined to be rightfully eligible for benefits under the supplemental security act of Social Security. Most are judged to be eligible.

Clearly, more need to be done to get these benefits out to the severely disabled Americans in a more efficient manner. The 1.3 million people who are waiting for a decision to be made on their application deserve better.

I am pleased to see you here, Mr. Astrue; and we are eager to hear your testimony. Thank you.

Chairman TANNER. Thank you, Dr. McDermott.

[The prepared statement of Mr. McDermott follows:]

**Opening Statement
of
Chairman Jim McDermott (WA-D)**

**Joint Hearing on Eliminating the Social Security Backlog
March 24, 2009**

Nearly 6 million severely disabled individuals depend on the Supplemental Security Income program, or SSI, to provide them with a helping hand. This program serves as a safety net by providing very modest cash assistance and medical coverage through the Medicaid program to those who have little to no income or assets.

Disability benefits, either through the Supplemental Security Income or Social Security programs, serve as a lifeline for millions of people. The cash assistance and health care coverage provided to these individuals gives them the help they need to make ends meet.

Many are not in a position to wait months to receive a decision on their eligibility for assistance, particularly those with very limited resources who are seeking assistance through the SSI program.

Yet, today the average waiting time to secure a hearing for a disability claim at the Social Security Administration is roughly 500 days or 16 and 1/2 months. This is simply unacceptable. There must be a better way to serve the American public.

To be fair, the Social Security Administration has operated at an insufficient funding level for a number of years. The Agency did not have the resources it needed to keep pace with the normal volume of applications for assistance in the Social Security and SSI programs, much less respond to rising claims that are associated with the aging of the Baby Boom Generation.

And the Agency has received new responsibilities as part of the Medicare Modernization Act of 2003 and the Medicare Improvements for Patients and Providers Act of 2008. As a result, SSA has experienced severe staffing shortages, which has led to a decline in service delivery.

In response, this Committee has worked with our colleagues on the Appropriations Committee over the last two years to provide SSA with additional funding to allow them to begin to reduce the disability claims backlog. And the American Recovery and Reinvestment Act provided the Agency with additional funds to address the recent increase in workload and its other needs.

We will continue to work with our congressional colleagues and the Administration to ensure the Agency has the resources it needs to respond to individuals who need and deserve help.

But it is now time for the Agency to take bold steps to expeditiously reduce the length of time that a disability applicant must wait for a hearing. And it is imperative that it is done in a manner that firmly upholds program integrity so that benefits are only given to those who are eligible to receive them.

It also is critically important that, while SSA adheres to all the necessary program integrity measures, it remains mindful of the precarious circumstances facing a disabled applicant who is awaiting a decision on his or her application.

Many go hungry and/or lose their homes as they wait for a hearing and subsequent decision. Others go without desperately needed medical assistance and/or prescription drugs as they wait. And others see their health and medical conditions deteriorate.

Meanwhile, a significant number of these applicants will eventually be determined to be rightfully eligible for benefits under the Supplemental Security Income and Social Security programs.

Clearly, more needs to be done to get these benefits out to severely disabled Americans in a more efficient manner.

The 1.3 million people who are waiting for a decision to be made on their application deserve better.

I look forward to hearing from today's witnesses and yield back the balance of our time.

Chairman TANNER. The Chair would ask that unanimous consent for anyone, any Member who wishes to submit a statement, an opening statement to the record, that be allowed without objection; and also the witnesses' testimony will be in the record in their entirety.

We would ask, Commissioner, if you could hold your testimony to 5 minutes. We would appreciate it, and I will try to ask the Members to do the same.

You are recognized, sir.

**STATEMENT OF MICHAEL J. ASTRUE, COMMISSIONER,
SOCIAL SECURITY ADMINISTRATION**

Mr. ASTRUE. Chairman Tanner and Chairman McDermott, Members of the Subcommittee, thank you for this opportunity to talk about the Social Security Administration's most important mission, service to the American people.

Just over 2 years ago, on my second day as Commissioner, I testified here before you. Your frustration with mounting backlogs and service delivery issues was palpable; and, to your credit, you recognized not only that the agency needed to be more efficient, but that Congress needed to provide more resources. I pledged to work with you toward that goal; and together we have made progress even in these difficult economic times, although not as fast or as far as any of us would like.

Here are some examples of service improvement:

AT the DDS level, we have reduced processing time by about 4 percent in each of the last 2 years. New electronic triaging systems accelerate payment to those who clearly meet the medical listings.

This year, for about 4 percent of all claimants, 100,000 to 125,000 Americans, the DDSs will approve their claims in about 10 days.

New support tools for examiners, such as the e-Cat System that is being tested in Michigan, Virginia, and Connecticut, are improving consistency and accuracy.

We are expanding a highly successful pilot to access electronic medical records. An enormous amount of time, cost, error, and delay comes from chasing down scattered paper medical records. A new paradigm for receiving medical records will allow us to make exponential improvements in the speed and quality of our decisions.

We are working hard to update regulations on our medical listings, and we are on schedule to update all of them every 5 years.

We are also expanding the listings to include rare diseases and conditions that clearly represent permanently disabling conditions.

We hired and trained 190 new ALJs last year, and we expect to hire 157 more in the coming months. We plan to maintain a national average ratio of about 4.5 support staff per ALJ.

At the hearing level 2 years ago, we were facing stubborn increases of about 70,000 more cases each year with no relief in sight. Due to a misguided effort to hold that number down, ODAR had been giving priority to the newest, easiest cases. So the predictable happened and the number of what the agency calls “aged” cases skyrocketed.

At the start of fiscal year 2007, we had about 65,000 “aged” cases which were then defined as 1,000 days or older, and some were as old as 1,400 days, which is simply obscene. We cleared out all but a handful of them that year.

For fiscal year 2008, we redefined the “aged” as 900 days; and we resolved about 135,000 of those cases. We lowered the “aged” definition again this year to 850 days, and we are ahead of schedule to process those 165,000 cases. As difficult a challenge as this is, it is the right thing to do. So next year we will raise the bar on ourselves again.

This decision is paying off. Two years ago, the Atlanta hearing office had the worst average processing time in the country of about 900 days. Today, nobody is waiting that long; and the time in Atlanta is 550 days. In fact, the worst average processing time in the country is now 726 days; and we have improvement plans in place for the 30 most backlogged offices. For example, we are providing relief to hearing offices with the most pending cases by transferring cases to the National Hearing Center; and we are expanding the number of National Hearing Centers dramatically in the next few months.

We are also adding 10 new hearing offices. We are adding additional satellite offices, and those new hearing offices are already well into the GSA site selection process.

In some of our field offices, as the GAO reports, service has deteriorated because funding has not kept up with workloads. The key source of relief has been the public’s use of our much-improved electronic services. We have the three most user-friendly electronic services in the Federal Government, as measured by objective surveys; and the public has embraced them enthusiastically.

For instance, so far this year, about 33 percent of our retirement applications are filed online, up from only 10 percent 2 years ago. Without this choice, wait times in many offices would have been longer.

Other efficiencies such as replacement of our antiquated telephones are under way, but the GAO is right that, ultimately, there is no substitute for adequate staff. Fortunately, passage of the Recovery Act and our annual fiscal year 2009 appropriation will allow us to hire over 5,000 people by the end of the year. Please keep in mind, though, that productivity suffers while we hire and train this many new people, and, for the most part, these new employees will not fully contribute until next year.

Your recent legislative action will make a huge difference going forward, and timely passage of President Obama's recommended appropriation for fiscal year 2010 will make an even bigger difference.

Lastly, I am pleased to report that we will send more than \$13 billion in one-time recovery payments to eligible beneficiaries beginning in early May and continuing throughout the month, 3 to 6 weeks ahead of the statutory deadline.

Again, thank you for your support. It has meant a lot to the agency. I look forward to continuing to build on our strong and productive working relationship.

I would be pleased to answer any questions you may have.

Chairman TANNER. Thank you very much, Commissioner, for that timely presentation; and your statement will be submitted to the record.

[The prepared statement of Mr. Astrue follows:]

**Statement of The Honorable Michael J. Astrue, Commissioner,
Social Security Administration**

Thank you for inviting me to appear before you today to discuss the current state of the Social Security Administration and our plans for the future. We are grateful for your long-standing support of our programs and for providing us with additional funding for fiscal years (FYs) 2008 and 2009. Social Security is indispensable to the disabled, seniors, and survivors and is one of the most important and most successful Federal programs that our country has ever established.

The programs we administer pay nearly \$60 billion in benefits each month—they are an integral part of the American economy. We have a proud history of excellent service to the public, and I reiterate my promise to do everything in my power to continue that tradition.

I would also like to thank you for providing us with additional funding in the American Recovery and Reinvestment Act (ARRA) of 2009 so that we can process our increasing workloads, replace our aging National Computer Center (NCC), and issue economic recovery payments. We are working with the Department of the Treasury to enable Treasury to issue the \$250 one-time economic recovery payments as soon as possible. As required by law, a total of about \$13.25 billion in economic recovery payments will be issued to nearly 55 million Social Security and Supplemental Security Income (SSI) beneficiaries. Although implementing the legislation requires extensive coordination with other Federal agencies, we are on track to ensure that these payments to our beneficiaries are issued in May—about 3 to 6 weeks earlier than the statute requires.

Since I last testified, we published the first Agency Strategic Plan during my tenure. It outlines our strategies to meet the challenges we face and to deliver the level of service the public expects and deserves. Over the past 2 years, we have made significant progress in implementing initiatives to better serve the public and to reduce the hearings backlog. We could not have done so without your help. As a result of the funding that you provided in FY 2008, we were able to hire and train 190 administrative law judges (ALJs) and staff to support them. We are on track to hire an additional 157 ALJs and over 700 support staff this year. This additional staff

will allow us to hear more cases and render more decisions. We have already seen a slight reduction in the number of cases awaiting hearings, a reduction which would have been even greater if we had not received more requests for hearing than we had anticipated.

Unfortunately, but not surprisingly, we are not yet where we need to be. Despite our progress, we have significant challenges ahead. The economic downturn, combined with the retirement of the baby boomers, and the fraying of our physical and technological infrastructure have diminished our ability to address our rising workloads and backlogs. The uncertainty of our annual appropriations, which often leaves the agency without full-year funding at the start of the fiscal year, adds further complexities. Adequate and sustained funding is essential for providing high level service to the American public. Nevertheless, with your continued support, we will eliminate the hearings backlog by 2013.

The Services We Deliver

We administer the Nation's social insurance programs and one of the Nation's largest means-tested income maintenance programs. Each year we send benefits totaling about \$700 billion to approximately 60 million persons. Social Security and SSI benefits play a significant role in the Nation's economic security.

The Old-Age, Survivors, and Disability Insurance beneficiaries programs benefit workers, their dependents, and survivors at critical junctures in their lives: when they retire, when they become disabled, and when a family's wage-earner dies.

Through the SSI program, we assist the most vulnerable persons in our society. These payments provide a safety net for aged, blind, and disabled adults and children who have little or no income or resources.

In addition to administering our own programs, we also assist the public in applying for food stamps and Medicare, including low-income subsidies under the Medicare Prescription Drug Plan. These programs also play a significant role in the economic security of the Nation's elderly and disabled.

How We Serve the American Public

We administer our programs and services through a network of over 1,400 offices that directly serve the public in communities throughout the country. About two-thirds of our over 60,000 employees deliver direct service to the public or support the services provided by these front-line workers. Field offices are our front door and the primary points for face-to-face contact with the public. Our employees also work in teleservice centers, card centers, processing centers, hearings offices, the Appeals Council, regional offices, and our headquarters in Baltimore.

I am particularly proud of our dedicated workforce, and I am pleased that *Equal Opportunity Magazine* recently named Social Security the top government employer. We also received high marks from our employees in the *2008 Federal Human Capital Survey*, with especially high marks for *Job Satisfaction* and *Leadership and Knowledge Management*, ranking among the top 10 Federal agencies in both categories.

Recently, a leader in the customer service industry contacted one of our field offices for service. He praised the claims representative who helped him as one of the most personable, customer-oriented employees whom he had ever met, either inside or outside government. I am never surprised when I hear stories like this one; I know our employees are dedicated to our mission and to serving the public to the best of their abilities each and every day.

Field Offices

I would like to take a few minutes to describe the demands our employees face during a typical day in one of our field offices. Our field offices are extremely busy, and our employees are pulled in a variety of directions every day.

Employees have only about an hour each day before the office opens to prepare the daily schedule of appointments, attend training, read policy updates, and process pending claims and post-entitlement actions. Once the office opens to the public, employees have little time to process pending work because much of their day is spent serving visitors and processing time-sensitive actions, such as issuing immediate payments for lost checks.

The two most common reasons for visiting our field offices are to file a claim for benefits or to obtain or replace a Social Security card.

- About 9 percent of field office visitors file claims for benefits, including retirement, disability, survivors, spouses, and children. Field office employees give this work their highest priority. Disability claims, much more complex than retirement claims, are particularly time intensive because our employees help

claimants complete detailed forms about medications, treatment, medical testing, work history, and daily activities.

- About 30 percent of field office visitors seek new or replacement Social Security cards for employment or tax purposes, to replace lost or damaged cards, or to obtain State and local government benefits. This work is critical to preventing identity fraud and has become more complex and labor-intensive because of legislative changes and heightened national security.

Once the office closes to the public, employees may have only a few minutes to take care of all remaining business. For example, employees often must gather additional data to verify allegations of resources and income, such as child support, unemployment benefits, or workers' compensation, in connection with the claims they had taken during the day.

Our field office employees work extremely hard and handle a wide variety of services. To give you a sense of the volume and variety of work the field offices routinely handle, in FY 2008, we:

- processed over 18 million applications for Social Security cards;
- verified Social Security numbers (SSN) about 1 billion times;
- provided about 19 million benefit verifications;
- processed 3.7 million retirement and survivor claims, nearly 500,000 Medicare applications, over 1 million Medicare subsidy applications, and 62,000 food stamp applications; and
- processed over 22 million status changes for our beneficiaries, such as changes of address and requests for direct deposit.

Teleservice Centers

Our other major point of contact with the public is through our 35 Teleservice Centers (TSC). The TSCs provide agent assistance to the public from 7 a.m. to 7 p.m. Eastern Time on normal business days, as well as automated telephone services 24 hours a day, 7 days a week. TSC employees handle a variety of inquiries, such as changes of address and telephone number, and requests for direct deposit and replacement Medicare cards. They schedule appointments and answer inquiries about payments and claim status and allow field offices to concentrate on workloads which require face-to-face interviews, additional development, or resolution of complex issues.

Social Security Card Centers

We currently have seven Social Security Card Centers located throughout the country. The card centers streamline and improve the integrity and stewardship of the Social Security number assignment process. Because of their specialized expertise, card center employees process applications for original Social Security numbers and replacement cards with a high degree of integrity, efficiency, and expertise. Applicants for a new or replacement card have shorter wait times in the card centers than in the field offices. Moreover, because the card centers handle much of the card-issuing workload, nearby field offices can focus on other critical activities, which results in quicker, more efficient service in field offices located in proximity to card centers.

Our card centers are located in Brooklyn and Queens, New York; in Las Vegas, Nevada; in Downtown and North Phoenix, Arizona; in Orlando, Florida; and in Sacramento, California.

DDSs, Hearings Offices, and the Appeals Council

Each month, we pay about \$12 billion in disability benefits to more than 13 million disabled beneficiaries across the Nation. The State disability determination services (DDS), our hearings offices, and the Appeals Council are integral to processing disability claims. These components, like our field offices, struggle with workload increases while they try to drive down backlogs created by years of understaffing and inadequate resources.

The disability claims process begins when a disability claimant completes an interview with a field office employee. We then forward the claim to 1 of 54 DDSs. These State agencies develop the medical evidence and make the initial determination of whether the claimant is disabled. We could not perform our disability adjudication process without the State DDS employees.

A claimant who is not satisfied with the DDS's initial determination may request that the DDS reconsider it. If the claimant is dissatisfied with the reconsidered determination, he or she may request a non-adversarial hearing before an ALJ. At the hearing, the claimant may appoint a representative, testify, and call and question witnesses. (In the ten States in which the reconsideration stage has been elimi-

nated, the claimant may request that an ALJ review the initial determination.) A claimant who is not satisfied with the ALJ's decision may request review by the Appeals Council. If the Appeals Council agrees to review a case and issues a new decision, a disabled claimant may appeal that decision to Federal district court. If the Appeals Council declines to review the decision, the ALJ's decision becomes the final administrative action, and it may then be appealed to the Federal district court.

Our Service Delivery Challenges

We are an agency comprised of specialized staffs, but our common goal is to provide high-quality service. We face many challenges in meeting this goal, and we plan for those we can anticipate. For example, we knew that the demographics of the baby boomer generation would affect workload volumes across the agency. We also knew that our most experienced staff could soon retire because many of them are baby boomers themselves. In fact, according to our most recent estimate, we may lose 44 percent of our current employees by 2016.

We also work carefully to forecast, to the best of our ability, the effect of other workloads on the agency. For example, we could not have predicted the new non-core workloads required by legislation, such as the Medicare Modernization Act, E-Verify, or the new Children's Health Insurance Program (CHIP) verification requirements. We use the additional targeted funding provided by Congress or reimbursement from other agencies for these specific workloads. We know from recent experience that more employers are using E-Verify voluntarily, and we will update through our established process with DHS reimbursement for these activities. In addition, we are now working to accommodate States that may choose to follow new CHIP rules for benefit eligibility determinations.

Certainly, we could not have predicted the current weakened state of the American economy or the high unemployment rate, factors that contribute to an increase in the number of applications for benefits. These unexpected events hit at the same time our workloads were significantly increasing due to the baby boomer retirement wave.

These additional and unexpected workloads are not our only challenges. Although we fully fund the State DDSs, they operate under a myriad of State personnel and budget rules. For example, due to budget constraints this fiscal year, some States have instituted statewide staffing freezes and furloughs. Some States have excluded DDS staff from these restrictions because they recognized the negative impact such restrictions would have on their disabled residents. Other States, though, have, over our vehement objections, chosen to treat DDS employees like other State employees and subject them to State restrictions, including furloughs.

Our information technology infrastructure is outmoded and inefficient, but improving dramatically. For example, we are converting the agency's master files from an in-house developed data base management system, created over 25 years ago, to a modern industry standard data base management system. We have already migrated our enumeration master file, which is our largest in terms of number of records. This year we plan to do the same with our next largest file, which houses earnings information.

During the 2 years I have been Commissioner, we have also started each year without a full-year appropriation. We spent all of FY 2007, almost one-third of FY 2008, and nearly one-half of FY 2009 operating under a continuing resolution. As you well know, during continuing resolutions, we must restrict our spending levels to that of the prior year's appropriated funding. This year it meant we operated through the beginning of March with nearly \$300 million less than the President's budget. Even if our workloads remained level from year to year, the annual inflation in our fixed costs, such as building maintenance, security, and salary increases, while necessary to maintain our operations, would reduce the amount we have available for taking retirement and disability claims and providing the other services the American public requires.

Workloads, though, have not remained level. In the past few years we have experienced a steady increase in the number of visitors to our field offices. Field offices averaged 800,000 visitors per week in FY 2006; 826,000 in FY 2007; and 854,000 in FY 2008. So far, in FY 2009, we have helped, on average, over 852,000 visitors each week, but that number appears to be rising. In February 2009 alone, we helped an average of over 940,000 visitors per week; we expect this upward trend to continue throughout FY 2009. (See Appendix A for average daily visitors per month.)

Even with all available field office employees and managers devoted to serving visitors, waits are long—31 percent of visitors without an appointment, about 5.8 million visitors, wait more than 30 minutes to be seen by staff; and 6 percent of visitors with appointments, about 1.1 million visitors, wait more than 30 minutes. Not only is this unacceptable to you, to the public, and to us, it is also demoralizing

to our employees, who have dedicated their careers to providing outstanding service to the public.

There is also a clear connection between our inability to hire staff and the deterioration in service at our TSCs. Nearly 15 percent of callers who call our 800 number receive a busy signal. As a result, many of our customers who were unable to conduct their business over our 800 number chose to go to their local field office. This increase in visitors to field offices contributed to the higher field office waiting time I have described.

Moreover, we now project a dramatic increase in workloads due to the economic downturn. This increase is a cause for concern. Recent projections indicate that we will receive over 300,000 more retirement claims in FY 2009 compared to FY 2008, an increase of nearly 9 percent.

The current recession has also affected our disability workloads. Studies suggest a correlation between increases in unemployment and increases in disability filings, and we have seen a sizable increase in filings so far this year. We currently anticipate more than 2.9 million disability filings in FY 2009, an increase of over 300,000 cases over FY 2008. This number represents more than a 12 percent increase in new applications and is 13 percent higher than the amount assumed in the 2009 President's budget.

In addition, although it is difficult to project with precision, we believe we may receive approximately 50,000 more hearing requests in FY 2009 than in FY 2008. We also expect to receive nearly 40,000 additional requests for reconsideration and more than 20,000 requests for Appeals Council reviews in FY 2009 compared to FY 2008.

We have paid the price for the growth in workloads and tight budgets in recent years. We have been forced to defer performing full medical continuing disability reviews (CDR) and other critical stewardship workloads, such as adjusting payments, correcting earnings, and processing wage reports and overpayments. We do not want to defer this work; these are critical workloads that ensure we are paying the right beneficiary the right amount at the right time. In addition, we know that for each dollar we spend performing CDRs, we recoup over \$10 in program funds. However, we have had to focus our limited resources on processing our initial claims workloads and getting eligible claimants paid, at the expense of performing this important work.

As a result of this workload deferral, we estimate that we had a backlog of 1.4 million full medical CDRs at the end of FY 2008, and we expect the backlog to grow by another 100,000 to 150,000 in FY 2009. However, we expect to process significantly more CDRs in FY 2009 than in FY 2008 in large part because of the additional dedicated funding provided by Congress for FY 2009.

In analyzing our challenges, our mission, and the public we serve, we have come to understand that simply working harder is not enough to overcome the workload challenges we face. Last fall, I outlined four key goals for the agency in our Strategic Plan: (1) eliminate our hearings backlog and prevent its recurrence, (2) improve the speed and quality of our disability process, (3) improve our retiree and other core services, and (4) preserve the public's trust in our programs. To move forward amidst our rising workloads, we must focus our attention on these key areas while modernizing the way we deliver service. We realize that achieving these goals will require sustained commitment and timely resources. If we are required to take on additional work, we will need sufficient funding to cover our full costs, as well as adequate time to implement any necessary regulatory, policy, process, training, or system requirements.

Investing in Our Agency Produces Results

Despite our growing challenges, we have made real progress within the past few years. We have begun the hiring and work that—if not for the economic downturn—would have produced more visible results for the American public, not just in terms of reduced backlogs and processing times, but also in terms of shortened field office wait times and fewer busy signals. Although it may not be readily apparent in these challenging times, we have achieved measurable successes.

Service Delivery at the DDS Levels

We are committed to a disability process that is fair, accurate, and as prompt as possible. Currently, though, our pending levels are too high, and claimants wait too long for a determination. Every day spent waiting for a determination creates additional burdens for many claimants who are already among the most vulnerable members of our society. This is simply unacceptable.

The initiatives outlined below will modernize the disability process and improve our timeliness, accuracy, and efficiency.

We must improve the beginning of the administrative process, even before a hearing is requested. Using new rules and technology, we can allow claims earlier in the process and improve service for disability claimants. I am pleased to report today that at the DDS level, we have reduced processing times by about 4 percent in 2007 and in 2008.

Policy Initiatives

We are currently using two processes—the Quick Disability Determination (QDD) process and Compassionate Allowances—to fast-track about 4 percent of all disability cases, a significant increase from the 2.6 percent of cases fast-tracked last year. This year we will find 100,000 to 125,000 Americans with the most severe disabilities eligible for benefits in about 10 days, instead of the 3 to 4 months it typically takes for an initial determination.

Under QDD, a predictive computer model analyzes specific data within the electronic file. This model identifies cases with a high potential that a claimant is disabled and medical evidence is readily available. Through Compassionate Allowances, the model identifies claims for applicants with medical conditions so severe that their conditions by definition meet the required standard. These fast-track systems increase the efficiency of the disability process and free up resources.

We have expanded our efforts to revise and update the medical listings. These listings allow us to make a favorable determination or decision for certain claimants without the need to consider that person's age, education, or work experience. When I became Commissioner, the medical listings had not been updated for decades. Some listings had last been updated in the 1970s, others in the 1980s. That is far too long. So, in the last 2 years, we have published final regulations for 3 of the 14 adult body systems, so they now reflect the updated advancements in medicine and technology. We are on schedule to update all of our medical listings every 5 years, and, in the future, we plan to update these listings as often as every 3 years. We are also in the process of expanding the listings to include rare diseases and conditions that clearly represent permanently disabling conditions.

To improve consistency and accuracy on complex policy issues, we have instituted a process for resolving disagreements between DDS disability examiners and Federal quality reviewers. In cases where the two components disagree on substantive issues, staff experts review the case and reach consensus. We anticipate we will resolve our most complex cases through this Request for Program Consultation (RPC) process. In addition, the RPC enables us to quickly pinpoint training needs and clarify or modify policies where necessary.

Systems Initiatives

We are always looking for ways to use technology to improve our disability process. For example, we are on the forefront of the move to electronic health records and are primed to take advantage of the new and exciting possibilities related to health information technology (HIT).

We began working with Beth Israel Deaconess Medical Center (BIDMC) in Boston last spring to determine how we could use HIT to make our disability decision-making more efficient and timely. Currently, when a claimant treated at BIDMC files a disability application, the Medical Evidence Gathering and Analysis through Health Information Technology (MEGAHIT) system automatically sends an electronic request for his or her patient's medical records. Almost immediately, the hospital electronically transmits back to us the individual's medical record through MEGAHit. We receive these records in seconds and minutes, rather than the usual weeks and months.

As part of our HIT initiatives, we are a leader in the development of the Nationwide Health Information Network (NHIN), the nation's electronic network of health information. On February 28, we took part in the first exchange of data across the NHIN as the healthcare provider MedVirginia forwarded records to us in connection with a disability claim. We will be tracking the flow of data from MedVirginia providers to us by way of the new system. This initiative will revolutionize the way we process disability claims by allowing us to automatically request and receive the medical records needed to make disability determinations. Yet we realize that this is a time of the great change in the HIT area and thus we remain committed to participation in the standards and certification process, as well as to the protection of the privacy of these records.

We also continue to develop and improve our Electronic Case Analysis Tool (eCAT). This tool helps disability adjudicators work through the policy aspects of claims adjudication to yield consistent, policy-compliant outcomes and better service to claimants. We expect the use of eCat will produce well-reasoned determinations with easy-to-understand explanations of how we reached our decision.

We plan to develop and implement a common case processing system for the DDSs. Currently, each of the 54 DDSs has its own unique processing system. A common system will help us take advantage of rapidly changing healthcare industry technology and provide the foundation for a seamless electronic disability case processing system. Our DDS partners agree that we need a common system, and we are working closely with them to develop requirements. This essential improvement will modernize and streamline our disability process, and we can only make important improvements on a timely basis, such as eCat, if we have a common system.

Service Delivery at the Hearing Level

As I have said many times, eliminating the hearings backlog is a moral imperative. Despite the additional workloads caused by the economic downturn, we have adjusted to changed circumstances and are still on track to eliminate the hearings backlog by 2013. Although it is difficult to project with precision, we believe we may receive approximately 50,000 more hearing requests in FY 2009 than in FY 2008. We have already taken preparatory actions in anticipation of this surge in hearing requests. We have moved to improve our processes, add new staff, and utilize new technologies.

Through the hard work of our employees and with the support of Congress, we are making positive strides toward driving down the hearing backlog and providing Americans with disabilities the prompt service they deserve. In fact, we have already seen a slight reduction in pending hearing cases. These cases have dropped in the past two months. Furthermore, in the spirit of the President's directive for transparent government, we will post the backlog numbers on the internet quarterly along with a clear explanation about the hearing backlog.

In May 2007, I announced my plan to eliminate the backlog of hearing requests and prevent its recurrence. This backlog reduction plan centers on:

- fast-tracked initial determinations;
- improving hearing office (HO) procedures;
- increasing adjudicatory capacity; and,
- increasing efficiency with automation and improved business processes.

Earlier, I discussed our initiative to fast-track initial cases. I will now highlight some of the key components of the plan's other three elements.

Improving Hearing Office Procedures

We remain committed to improving our hearing office procedures. We have significantly reduced the inventory of the most aged cases, those that have been pending the longest. Clearing these cases normalizes our hearing work flow and more importantly, claimants who have waited far too long for a hearing decision finally receive one. We defined aged cases in FY 2008 as those cases that would be at least 900 days old by the end of that fiscal year and cleared all but 281 of the more than 135,000 we identified. For FY 2009, we raised the bar and redefined aged cases as those cases which will be at least 850 days old by the end of this fiscal year. There were 166,838 aged cases at the beginning of FY 2009, and we are ahead of our target and are more than halfway toward clearing all of them. We are looking to continue to attack the aged cases, and our probable goal for FY 2010 is to work the 825-day-old cases, approximately 179,000 cases.

We are also finding ways to expedite favorable decisions. We reinstituted the Attorney Adjudicator program to allow our most experienced attorneys in appropriate cases to make on-the-record, favorable decisions without a hearing. This program brings eligible applicants onto the disability rolls more quickly than if they had to wait for a hearing. Through the first five months of FY 2009, Attorney Adjudicators had issued 13,462 favorable decisions and are on target to meet our year end goal. We have also instituted a DDS remand process, special Federal Quality Reviewer screening units, and a Medical Expert Screening process to help identify cases that may be allowed without the need for a hearing.

Increasing Adjudicatory Capacity

We are working to maximize our ability to issue decisions at any given point in the disability process. In collaboration with State DDSs, we are using the informal remand process to send pending cases, which have been profiled as likely to be allowed, back to the DDS for review and possible favorable determination. As a result of this initiative, we were able to dismiss 16,838 requests for hearing due to favorable DDS decisions in FY 2008. We are on target to meet our year-end goal for DDS remands. All States are now able to process electronic informal remands, which will enable us to more easily transfer these cases to the DDSs.

Our first National Hearing Center (NHC) is performing well. Located in Falls Church, Virginia, the NHC plays a crucial role in increasing our adjudicatory capac-

ity and giving us the flexibility to address the areas of highest pending without waiting years to build or expand hearing offices. For example, transferring cases to the NHC from some of the offices with the highest number of pending cases has contributed to an improved average processing time in the hearing offices in Atlanta, Georgia; Cleveland, Ohio; and Flint, Michigan. The ALJs in the NHC hold hearings remotely using video conferencing and provides us the flexibility to better balance pending workloads across the country. In FY 2008, the NHC issued 2,151 decisions. We will open another NHC site in Albuquerque, New Mexico this month and plan to open one in Chicago in the upcoming months. We also plan to open a site in Baltimore early next fiscal year.

We are also working with the General Services Administration (GSA) to expedite opening 10 new hearing offices. (See Appendix B for a map of the planned hearings offices.) We are adding centralized centers for case pulling and decision writing in the regional offices to more quickly accommodate our needs.

We are also hiring new employees. In FY 2008, we hired and trained 190 ALJs. We have received a new certificate of eligible ALJ candidates, and we expect to hire 157 new ALJs this year. We have already hired 140 new support staff in our hearing offices so far this year, and expect to hire over 700 additional support staff. This hiring will allow us to achieve a national average ratio of about 4.5 support staff to every ALJ.

We are on target to eliminate the hearings backlog by 2013. We expect to reduce the number of pending hearings to 466,000 by FY 2013, which is the number of cases we will have when we reach our goal of an average processing time of 270 days. We are focused on hiring enough ALJs and support staff to achieve these goals given our current receipt and productivity projections. Our current estimate is that we will need 1,400 to 1,450 ALJs to achieve our goals, and we are expanding our physical infrastructure, to the extent we can, so that we can reach that level. We expect to hire 208 ALJs in FY 2010, while maintaining a national average ratio of about 4.5 support staff per ALJ. We will continue to work with GSA Headquarters and the Regional GSA offices to ensure we have adequate space to handle this significant increase.

Finally, we are seeking to increase our adjudicatory capacity by ensuring that our ALJs are providing the service the public deserves. At the beginning of FY 2008, our Chief ALJ issued a letter asking all ALJs to strive to issue 500 to 700 legally sufficient decisions a year. About 50 percent of full-time experienced ALJs are meeting this expectation. Productivity in our Office of Disability Adjudication and Review (ODAR) increased substantially for two consecutive years, in FY 2007 and FY 2008. In FY 2008, ODAR conducted nearly 15,000 more hearings than in FY 2007; average dispositions per ALJ also increased. But we were not able to sustain that level in the first few months of FY 2009 due, in part, to the hiring and training of a large number of new ALJs late in FY 2008. It takes about 2 years to fully train and mentor newly hired ALJs and support staff. Thus, we expect these new judges to become increasingly productive throughout the year, and we have already seen a significant improvement in productivity in both January and February.

The increase in adjudicatory capacity at the hearing level will generate increased workloads at the Appeals Council. To address this rising workload, we will hire additional administrative appeals judges and support staff for the Appeals Council, and make additional overtime available. In FY 2009, we expect to add a total of 135 new staff at the Appeals Council, while replacing losses due to attrition.

Automated/Improved Business Processes

We have also taken steps to “work smarter.” In FY 2008, we made significant progress in eliminating the remaining backlog of paper folders and transitioning to an electronic environment.

We are preparing more cases for hearing (“pulling cases”) this year. This increase in cases ready for hearing will give the ALJs more cases to hear and decide.

We are expanding the use of video equipment and have initiated the Representative Video Project. Under this project, representatives of disability claimants may use their personal equipment to participate in hearings from their own offices. We are using desktop video units in claimant-only hearing sites in addition to the traditional video equipment used in hearing offices.

We will be implementing an in-line quality review of the claim file, scheduling process, and decision writing to ensure timely and legally sufficient hearings and decisions.

To balance pending workloads nationally, last fiscal year we realigned service areas and moved workloads from regions with heavy workloads to regions that had the capacity to process additional work. We continue to monitor our workload numbers and make additional adjustments as needed.

Our plan is working—we have improved our hearing level performance. In FY 2008, we had an impressive 5 percent increase in our hearing dispositions and made important gains in reducing aged cases and average processing times in the most backlogged offices. But for the increase in filings due to the economic downturn, the number of pending cases would have dropped for the first time this decade. However, because of the increased workloads, we ended up with a 14,000 case increase in pending cases. Yet, this is well below the annual increase of 70,000 cases we have seen in the years preceding the hearing backlog reduction plan.

So far in 2009, our pending level rose in first 3 months, but dropped by 1,294 cases in January and by another 1,719 cases in February. Our pending level is currently up 4,700 cases over the level at the end of FY 2008. If we continue our present concerted effort, combined with the increased productivity of our recently hired judges, I am hopeful we can drive the hearings backlog downward this fiscal year.

We have a unique opportunity to significantly improve our service to our disability claimants. Taken together, our initiatives address every aspect of the hearings backlog problem. If all of these initiatives are successful, there is light at the end of the tunnel.

Improving Retirement and Other Core Services

We simplified our policies, improved our technology, and automated business processes to deal with our other significant workloads. As the Government Accountability Office recently indicated in its January 2009 report on service delivery and the baby boomer retirement wave, our agency's service delivery has suffered because funding has not kept up with increasing workloads. The only way we have managed to hold our own is by offering the public the option of secure, user-friendly, electronic services.

Perhaps the most dynamic and successful model illustrating how we plan to improve service in the future is our Ready Retirement project. In FY 2008, we began putting the key features of this transformational initiative into place by simplifying and further automating the processing of online retirement applications. We will continue to implement this initiative over the next few years using a multi-faceted approach: simplified enrollment, streamlined adjudication, and public education.

The first key feature of Ready Retirement focuses on simplified enrollment. In December 2008, we introduced a new Internet application (iClaim) for retirement, disability, and aged spouses benefits. The new online claims application asks claimants questions that are pertinent to their own personal situation, relies on information already housed within our records, and contains navigational tools that make the application easy to use. As a result, iClaim not only simplifies the current process, but also shortens the time it takes to file online and eliminates the need for most online filers to visit their local field office. We have had incredible success with our launch of the iClaim media campaign featuring our spokesperson Patty Duke.

The simplified enrollment process also hinges on efforts to update our policy. After thorough study, analysis, and vetting with agency components, we have simplified a number of policies that support Ready Retirement and other online initiatives. Future releases of iClaim will include authentication protocols to provide two-way online communication with online applicants while safeguarding personally identifiable information. We also are exploring new data exchanges and matching agreements to verify claims information online.

Our efforts to streamline policy apply to both online claims and claims filed in person. For example, we know there have been concerns about our policy on advising claimants about their options for electing when to start receiving benefits. Our policy instructs employees to discuss all benefit types for which a claimant may be eligible, including options for when to start receiving benefits and does not prohibit employees from advising claimants about their benefit election options. The same policy holds true for Internet claims: claimants who file online have access to agency publications that explain all factors that they should consider when deciding when to retire; these publications also explain what other types of benefits are available to the claimants. Employees processing these online applications screen for other potential entitlements and contact claimants to discuss these and month of election options if there are questions.

Our current version of iClaim, which is similar to our prior Internet application, currently requires manual review and adjudication because it does not take into account certain factors, such as non-service months, protective filing, and retroactivity when presenting month of election options to claimants. I am excited to announce that in May 2009, we are introducing a new version of iClaim that will offer election options to claimants filing online based on all of these factors. This new version of iClaim will give online filers additional support and will reduce the need for employ-

ees to contact them. Our employees will continue to contact claimants as necessary to ensure that their benefit elections are clear and that accurate determinations are made.

The second key feature of Ready Retirement is streamlined adjudication. The claims adjudication process includes many determinations, and the streamlined adjudication model is the next step in automating some of these manual decisions. All retirement applications require some manual processing, but streamlined adjudication will automate parts of the process. This automation will provide valuable efficiencies and administrative savings, while increasing our ability to provide a fully electronic claims process to the public. Improvement in adjudication will be implemented only after there are safeguards in place to protect applicants' rights to all the benefits to which they may be entitled.

Finally, the last key feature, and really the foundation, of Ready Retirement is public education. Through our financial literacy campaign, we are educating the public about making an informed decision as to when to begin receiving retirement benefits.

In the past year, we implemented several educational tools. We introduced an online Retirement Estimator to enable the public to get immediate and personalized benefit estimates, and we created a new fact sheet and accompanying podcast titled, "When to Start Receiving Retirement Benefits." We also revised the *Social Security Statement* to provide more information to younger workers. For every *Statement* sent to a worker aged 25–35, we now include an insert called "What young workers should know about Social Security and saving." This new supplement provides additional information about retirement planning and includes a chart showing how much difference just a little bit of saving can make.

Our Internet services took top honors on the American Customer Satisfaction Index (ACSI) scorecard for the fourth quarter of FY 2008. The ACSI tracks trends in customer satisfaction and allows Federal agencies to benchmark their performance against comparable best-in-class entities. Our Retirement Estimator and iClaim applications were the highest scoring applications in the ACSI's "top performers" category.

The public has responded enthusiastically to the new iClaim process. So far this year about 33 percent of our retirement applications have been filed online, up from only 10 percent just 2 years ago. Taken at face value, this increase alone is impressive. But to truly understand the importance of Ready Retirement for our field operations, let me explain to you what just one aspect of service in the field would look like today if Ready Retirement did not exist.

In the first quarter of FY 2009, 161,000 applicants started their retirement applications online. Without Ready Retirement, those claimants would have visited their local field offices or filed by telephone. If all of these claimants had filed in their local field office, we estimate wait times would have increased by 5 percent and busy signals by 6 percent.

We will continue to analyze customer satisfaction and the performance and usability of iClaim. It is more critical now than ever that we are able to continue to fund this important project. As I mentioned earlier, recent projections show that we now expect to receive over 300,000 more retirement claims in FY 2009 compared to FY 2008. We must, to the greatest extent possible, push forward with our efforts to automate these applications. If our Ready Retirement initiatives are successful, we will not only be able to more efficiently and effectively handle the increase in applications from both baby boomers and the economic downturn, but also we will be able to expand these new processes to automate and streamline other high volume workloads.

Protecting America's Investment

We are proud of all of our recent accomplishments, and I expect our momentum will continue. The additional funding in the ARRA together with our FY 2009 appropriation puts us in a much better position to deal with our fraying infrastructure and the current service challenges created by the economic downturn.

Use of American Recovery and Reinvestment Act of 2009 Funds

Our NCC houses data critical to providing outstanding service and to paying benefits promptly and accurately. Because the NCC is over 30 years old, it will soon no longer be capable of supporting the growing demands of our computer systems and computer-based services. Replacing the NCC will allow us to provide service 24/7 and avoid outages and slowdowns that disrupt service delivery.

Now that we have the ARRA funding, we are continuing to work closely with the GSA—which manages federal construction projects—on all aspects of the pre-planning for the new NCC. The formal planning process with GSA will include formu-

lating criteria for the new data center, selecting a site, and developing a detailed construction timeline. In consultation with us, GSA will be responsible for completing most of these steps.

The ARRA also calls for a one-time payment of \$250 to certain Federal beneficiaries, including Social Security and SSI beneficiaries and provides the administrative funding necessary to ensure that these critically needed payments are infused into the economy as quickly as possible. We are on track to make these payments in May, ahead of the statutory deadline.

The ARRA also provides an additional \$500 million to process our rising retirement and disability workloads, as well as the backlogs resulting from the economic downturn, and to invest in related information technology projects. Unlike annual appropriations, which must be used within a fiscal year, we will be able to use this \$500 million over the next 18 months.

Use of FY 2009 Appropriation

We are handling workloads far above what we anticipated just 6 months ago. Our full year appropriation, which supplies \$126.5 million more than was included in President's FY 2009 budget, as well as the additional funding in the ARRA, will allow us to invest in information technology, to hire 5,000 to 6,000 new employees before the end of the year, and to allot additional overtime to process critical workloads. In addition to replacing all of our losses in FY 2009, we will assign new employees to our front-line operations where they will have the greatest impact—approximately 1,200 employees to our field offices, 900 employees to our hearings offices, and 600 employees to State DDSs.

Hiring new employees is critical to us, but operating under a continuing resolution, as we have this year, has impeded our ability to bring on new hires and have them fully productive before the end of the year. (See Appendix C for the effect of continuing resolutions on staffing trends.)

Unfortunately, our new employees will not have an immediate impact on our current or backlogged workloads as hiring and fully training new employees is a lengthy and resource-intensive process. Hiring requires posting vacancies, reviewing applications and resumes, conducting interviews, conducting background checks, and offering positions. Often, new employees must relocate to their duty stations or give their employers sufficient notice so that they can seek a replacement.

Once they report to work, training lasts from 13 to 17 weeks because of the complexity of our programs. After this initial training, new employees are assigned a mentor to act as a resource and to assist in learning the intricacies of processing our work. This "on-the-job" training for new employees typically lasts a full year. At the end of the year, though not fully proficient in all parts of the job, these employees would be making a significant contribution to workload processing. The time spent mentoring, however, reduces the time our more experienced employees have to process their own work. When we have significant increases in staffing levels, the time put into training and mentoring result in reductions in productivity in the short run.

Our Commitment for the Upcoming Year

We made a commitment to the American public to work down the hearings backlog. We continue to improve productivity each year and to process more work. In FY 2009, we plan to process over 300,000 more retirement claims, 30,000 more initial disability claims, and approximately 70,000 more hearings than in FY 2008. The additional funding will also help us handle increasing visits to our field offices and calls to our 800-number.

The FY 2010 President's budget proposes an increase of 10 percent above the FY 2009 level. This amount includes resources to increase our staffing levels in FY 2010, which will enable us to further increase our productivity.

Stewardship & Program Integrity Work

Preserving the public's trust in our programs is one of the key aspects of our Agency Strategic Plan. We take pride in our ability to protect and carefully manage the resources, assets, and programs entrusted to us. We must ensure that we pay beneficiaries the correct amount of benefits and that they continue to be entitled to those benefits. Due to the budget constraints and increasing workloads, however, we have been forced in recent years to scale back these program integrity efforts. Our primary program integrity tools are CDRs and redeterminations of income and resources in the means-tested SSI program. The FY 2010 President's Budget includes \$759 million for our program integrity efforts, an increase of \$255 million from FY 2009. This will allow us to complete a total of 794,000 CDRs, of which 329,000 will be full medical CDRs, and 2,322,000 SSI redeterminations. This funding will ensure that taxpayer dollars are being spent properly in the major entitlement programs.

Continuing Disability Reviews

We conduct work and medical CDRs to determine whether or not beneficiaries continue to meet the definition of disability. We initiate CDRs based on work activity when a beneficiary voluntarily reports that he or she is working, when wages are posted to a beneficiary's earnings record, or when a beneficiary has completed a trial work period. In FY 2008, we conducted about 170,000 work CDRs, which resulted in cessation determinations in 850 cases.

Generally, the law requires us to conduct medical CDRs on a periodic basis to ensure that only those who continue to be disabled receive benefits. We conduct medical CDRs using one of two methods. We periodically review cases when we expect that a beneficiary's condition will improve, and we have a DDS perform a full medical review. We also conduct medical reviews when we receive voluntary or third-party reports of medical improvement. In some cases, we send questionnaires to beneficiaries, whom we have identified using a statistical model, and evaluate their responses to determine if they remain disabled.

In FY 2007, we began using a new statistical model to select cases with a higher likelihood of medical improvement. That year, we processed 747,170 periodic medical CDRs of which 189,955 required full medical reviews. We spent \$281 million to process these CDRs. Of the CDRs processed, we notified 52,490 beneficiaries that we would be ceasing their benefits because they no longer met our definition of disability. We estimate that, after all appeals are exhausted, we will stop paying benefits to about 36,000 beneficiaries, along with their eligible dependents. We estimate that the present value of future benefits saved from this activity is \$3.3 billion. Historically, the ratio of program savings to administrative costs for these cases is about \$10 to \$1. Fluctuations in the year-to-year savings-to-cost ratio may occur, however, due to changes in the distribution of CDRs processed under the disability or SSI programs and the percentage of cases where there is a high likelihood of medical improvement.

Since FY 2002, however, we have processed fewer CDRs than come due in each year because of limited funding and the need to balance our service and stewardship efforts; we continue to face a significant backlog of initial claims and hearing requests. (See Appendix E for CDRs processed over the last several years.)

In FY 2008, we processed 240,000 full medical CDRs, an increase of about 50,000 over FY 2007. The FY 2009 Omnibus Appropriations Act provides an upward adjustment to the discretionary caps to fund program integrity activities such as CDRs. At this level, we will be able to process 329,000 full medical CDRs this year, an increase of 89,000 compared to FY 2008. Despite these increases, at the end of FY 2008, we had a backlog of 1.4 million full medical CDRs, and we project the backlog to grow by another 100,000 to 150,000 in FY 2009.

SSI Redeterminations

We must also ensure that we pay SSI in the correct amounts. Due to the complexity of the SSI program and the large number of factors that can affect a recipient's eligibility and payment amount, these redeterminations can be particularly challenging. One of the ways we ensure accurate payments is by periodically completing redeterminations to review all the non-medical factors including income, resources, and living arrangements of SSI eligibility, such as resource and income levels and living arrangements. Based on this review, we determine whether a recipient is still eligible and still receiving the correct payment amount.

There are two types of redeterminations: scheduled and unscheduled. Except for certain institutionalized recipients, we periodically schedule all recipients for a redetermination at least once every 6 years. Moreover, using a statistical model to estimate the likelihood of overpaying SSI recipients, we target the most error-prone cases each year. We conduct unscheduled redeterminations on an as needed basis when recipients report, or we discover, certain changes in circumstances that may affect the SSI payment amount.

In FY 2008, we conducted 1.221 million SSI redeterminations. We estimate that these redeterminations will produce \$2.1 billion in retroactive payment recoveries and ongoing payment reductions. If we had the resources to conduct SSI redeterminations on all SSI recipients, approximately \$5.7 billion in recoveries and ongoing payment reductions would accrue. In FY 2009, we expect to conduct 1.7 million SSI redeterminations, an increase of nearly 500,000 compared to last year.

Future Program Integrity Work

In short, we know our program integrity workloads are critical to ensuring well-run programs and accurate payments, but our ability to carryout such workloads depends upon resources including the availability of trained staff to do this work. With the additional funding we are receiving in FY 2009, we will perform more CDRs and

SSI redeterminations. For FY 2009, we plan to process 329,000 medical CDRs and 1.711 million SSI redeterminations, an increase of 89,000 and 490,000, respectively, from FY 2008 levels. Even with these increases, we still processed fewer program integrity reviews than we did earlier in this decade. Due to the tight budgets of the recent past, we had to make tough choices between service to the public and stewardship efforts. We believe that we are beginning to reverse the overall decline in program integrity reviews, and we expect further increases in FY 2010 because of the funding included in the President's FY 2010 budget proposal.

Highlights of our Plan to Improve Service Delivery

To keep pace, we know we have to modernize the way we do business, and we are making great strides to do so. We are searching for additional policies we can streamline, technologies that we can introduce or improve, and business processes that we can restructure or automate. Below are some of the innovations that we plan for the future. Without sufficient and timely funding, some of these innovations may be difficult to implement.

Service Oriented Architecture

Historically, our systems were developed at different times to meet a specific need that arose. This reactive process resulted in a collection of technologies rather than a cohesive, fully integrated system. Our current strategy introduces seamless Service Oriented Architecture (SOA) to replace our aging online and in-office benefit applications. We will build our information services so that the core data and components can be shared rather than duplicated in many different systems. Without the need to consider multiple stove-piped systems, systems development of new business processes under SOA will be more efficient.

Disability Direct

Although still in the planning stages, the Disability Direct initiative will automate the processing of online disability claims resulting in a much more efficient route from application to payment. It will improve the online disability claim and appeals process by collecting information once and re-using it rather than requiring applicants to complete the same information repeatedly, which will help offset our labor-intensive disability workload. This streamlined process will provide more time for employees to handle other workloads and help with field office and telephone traffic. It will also fulfill the public's expectation of convenient, effective, and secure electronic service delivery options.

Quick, Simple, and Safe SSN

We are developing strategies and an implementation plan for reducing Social Security number related workloads so that we can improve service to the public while maintaining the integrity of the SSN. The goal of the Quick, Simple, and Safe SSN initiative is to find new ways to assign SSNs, update SSN information, and issue replacement Social Security cards using efficient and secure methods.

Additional Social Security Card Centers

In addition to the seven current Social Security Card Centers, we plan to open four additional centers: two in Houston, Texas, one in Minneapolis/St. Paul, Minnesota, and one in Philadelphia, Pennsylvania.

Telephone Infrastructure and Automation Improvements

We handle over 57 million calls on our national 800 number each year. The underlying telephone system structure is antiquated so we must make infrastructure improvements to ensure that our telephone service is convenient, accessible, and efficient.

Over the next several years, we are replacing nearly all of our phone systems with Voice-over Internet Protocol (VoIP) technology. A project of this scope is initially costly, and we have moved cautiously so that we can address concerns that inherently arise with any new system. We believe the end result will improve customer service and lower long-term costs.

VoIP gives us flexibility to route calls from busy sites to less busy sites when necessary. We also will be able to collect management information that will allow us to identify and make adjustments to improve service including some customization like language preference that may be prevalent in certain geographic locations.

We plan to continue to add automated applications that are responsive to the public's needs. Callers who use our automated services can conduct a variety of transactions as well as listen to a variety of informational messages addressing frequently asked questions. Improving our telephone operations will allow callers the convenience they want while freeing us to work more complex workloads.

SMART Service

After visiting several field offices, in January 2008, I asked my staff to examine our field office layouts and develop ways to improve field office reception areas so they are more efficient for conducting business. The ultimate goal of this initiative, known as Space Modernization and Reception Transformation Service (SMART Service), is to lay the groundwork for the “SSA Office of the Future.” In our field offices, we are currently piloting new technology that allows us to deliver service to rural areas through video, the public people about interacting with our agency by watching a Social Security satellite broadcast, and providing self-help computers to visitors who want to do business over the Internet with us but many not have access to a computer at home.

Conclusion

Next year, our agency will celebrate its 75th anniversary of providing critical services to nearly every American. Over the last three-quarters of a century, our programs and responsibilities have continued to expand. Unfortunately, for too many years, we have not received sufficient and timely funding to allow us to keep pace with our increased workloads.

You have started to change that pattern. Therefore, once again I want to acknowledge our appreciation for the funding you provided for FY 2008 and 2009 and in the ARRA. We will continue to use this money to reduce our backlogs by hiring and training new employees and expanding our use of technology. We will also protect the information we house and maintain the services we provide by building a much-needed new National Computer Center. Of course, we will work with Treasury to issue the \$250 one-time economic recovery payments sooner than required. I am acutely aware that our Nation is in economic crisis, and we take the responsibility associated with the Administration’s and your investment in our agency seriously.

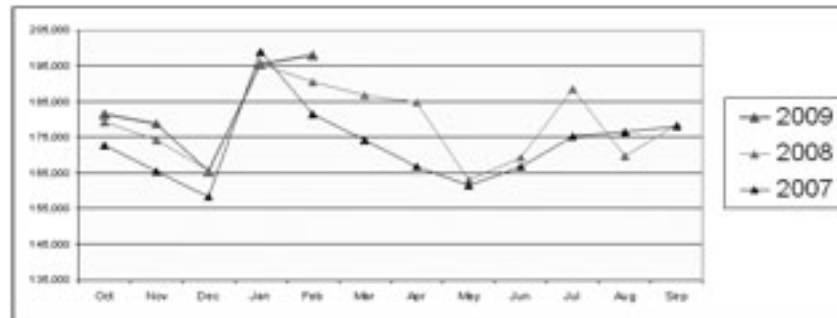
With your support, I am confident that we can successfully address our challenges, but it will take several years. I am compelled to stress that we will continue to need timely, adequate, and sustained funding beyond FY 2009. Last year, I testified that we were facing an avalanche of retirement and disability claims at the same time we were addressing large backlogs due to years of increasing workloads and limited resources. That situation has been exacerbated by the economic downturn and we are experiencing an increase of applications over what we projected.

We did as much as we could to be ready to act when we received our budget. We are currently hiring thousands of new employees who we will need to train. Many of them will not become proficient this fiscal year delaying the positive effect they will have on our workloads. Our greatest opportunity for success is directly tied to timely and sustained funding.

We are committed to working with Congress and the American people to address our challenges and improve service for the years ahead. We are confident that with your support, the support of our stakeholders, and the necessary resources, we can achieve our goals.

Appendix A

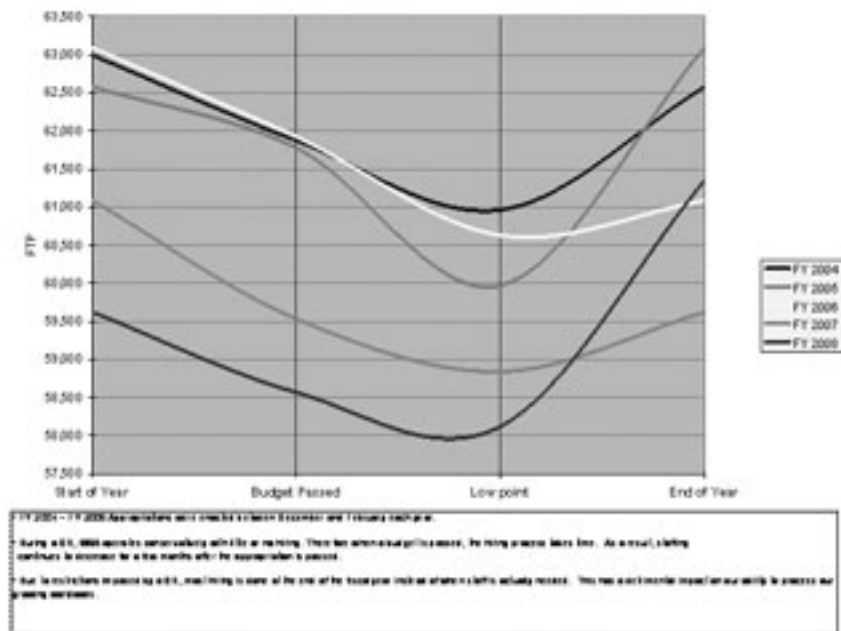
Average Daily Visitors Per Month



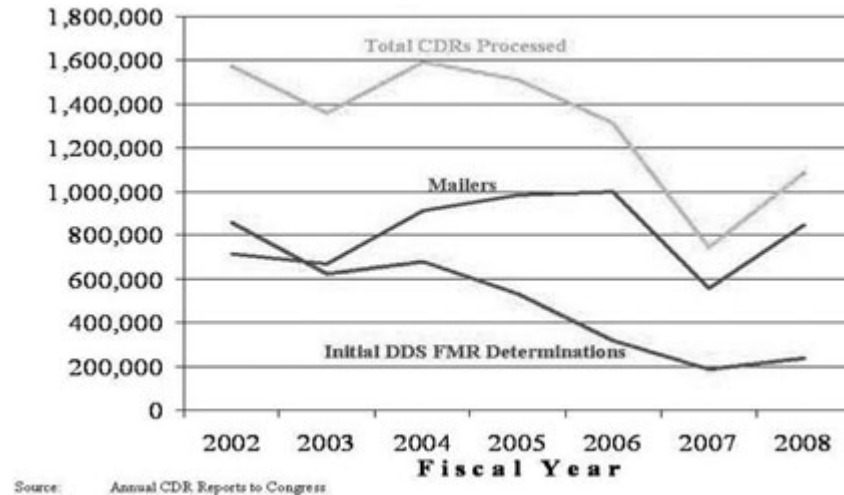
Appendix B

Office of Disability Adjudication and Review: Regional and Hearing Offices and Remote Sites

Appendix C

Continuing Resolutions (CRs) Cause Erratic Staffing Trends

Appendix D

CDRs Processed by Fiscal Year

Chairman TANNER. I just have one question, and then I am sure that members will elaborate.

You mentioned the electronic filing about 33 percent. I generally applaud efficiencies that can be achieved through electronic means otherwise. Do you have any data with regard to the error rate? Because, as we know, when an application is not in order, then not only is it delayed, but it causes even more work. And so as we try to go and streamline the system with electronic online, et cetera, I think we have to be sure that the error rate is not unacceptable? Do you have any data on that?

Mr. ASTRUE. We do, And I appreciate that question, because it is an important one.

Our quality office has looked very carefully at the online applications versus the applications taken in the field office, and there is no statistical difference between the quality of the ones done in the office and the ones that are taken online. To the extent that there is a difference, the error rate is actually slightly higher for the ones that are taken in the office. So we are confident about that.

And one should also keep in mind that this is not a fully automated process, that in every case, even on something taken online, there is an individual in the office who is looking at that application and who does call people back if there is anything on the face of the application that would trigger any additional interaction with that person.

Chairman TANNER. One other question then. When do you expect your plan to begin to take effect? You said 2 years ago that you had a plan to reduce it, and now it is as bad or maybe, in parts of the country, worse. With the additional revenue, can you give us a timeframe as to what we can expect?

Mr. ASTRUE. We have adjusted the planning. Clearly, with the sudden deterioration in the economy, we needed to go back and revisit the assumptions of the original plan. And there are some small differences, but the big one is we need an increase in capacity.

So when we first developed this plan and when I first testified before this committee, we had embraced the figure of 1,250 administrative law judges as what we needed to drive the backlog down; and we were down at one point to just barely over 1,000. In order to meet the targets for driving the backlog down over the next 4 years, we are going to need more capacity. So we are targeting 1,400 to 1,450 judges.

Right now, the budget assumption is that when we finish the fiscal year 2010 hiring—assuming we get the appropriation that we hope from the Congress consistent with the President's budget and that we expand our space quickly enough—we will have enough space for the hiring of the new judges. Now it is a close call that we will be getting as much as we need for fiscal year 2010, but we are working hard on that. But if we hit the mark on the appropriation, we hit the mark with the GSA work, we should have, I believe, 1,452 judges at the end of that hiring.

We lose about 60 judges a year to attrition, and the losses are not even over the course of the year. The departures tend to be toward the end of the year. So we will actually be momentarily over that target at the end of the hiring if everything goes according to the projection, and we need that additional capacity to hit the original goals. Otherwise, we are not going to make it.

Chairman TANNER. The judges are fine. What about the staff assistants that prepare the cases? The judges—that is a problem, too, I am told.

Mr. ASTRUE. It is indeed. And we will have a higher support staff ratio than we have had during most of this decade. We are targeting not only a national average of 4.5 per ALJ, but we are trying to keep to a floor of 4. There has been, in my judgment, too much variation in hearing office support from hearing office to hearing office. So, in addition to taking it up a tick to the 4.5, we are going to try to keep a floor of 4.

Again, a couple of people will leave. The numbers will vary from time to time in offices for brief periods of time. But the goal is a floor of 4 and an average of 4.5, which should be adequate.

Chairman TANNER. I may have some other questions to submit in writing to you. I don't want to take too much of my time.

Mr. ASTRUE. Thank you, Mr. Chairman.

Chairman TANNER. Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

You know, along that line, how many judges are hearing less than five cases a year?

Mr. ASTRUE. Less than five cases a year?

Mr. JOHNSON. Yeah.

Mr. ASTRUE. I don't think any now. We had one judge that hadn't heard a case in 6½ years, and we have been working on counseling him. He is hearing about 50 a year now. I believe he is just largely allowing all those cases.

Mr. JOHNSON. So we don't have anybody that is not pulling their weight right now?

Mr. ASTRUE. We have certain judges pulled off for administrative work, and the president of the union by the contract is allowed to work full time on union business. Although, to his credit, he does hear some cases.

Mr. JOHNSON. When you say "some". how many?

Mr. ASTRUE. I don't know. I would have to check. We are now making that kind of information public which we haven't in the past.

Mr. JOHNSON. Different subject. Why did we learn just last year that the NCC had to be replaced? The center is apparently 30 years old, and surely somebody told you the problems that were existing there or were coming.

Mr. ASTRUE. Certainly coming in I was not aware that this was a problem, and I was not aware that this was a problem until a bit into 2007. And I actually picked it up through our strategic planning process, where we said we have got to look at what we need to plan for the future, and it was clear that this was a major issue for us.

It took a little while to get a handle on it. There had been a part of the organization that had started to look at this, and there was a study pending that came in in January of 2008, and it took a little time to push back and look at the options. Because, you know, the first time someone comes in and says, "I would like to spend three-quarters of a billion dollars for a new facility". you don't say, "Oh, fine". So we spent several months going back and forth, seeing whether we could in any way extend the life of the existing facility, look at other options; and, finally, we came to the conclusion that we really did need to replace it. It took a little while.

We communicated that to the Congress after the May——

Mr. JOHNSON. Let me interrupt you, because we understand what the problems are. I mean, I have seen pictures of some of the facilities over there, and it seems to me it is a big fire hazard. If that building burnt down today, if the NCC failed, what are the chances of you recovering the information that would be destroyed?

Mr. ASTRUE. The chances of recovering the information that is destroyed are extremely high. We run backup tapes daily and take them to an offsite location every day except Sunday. So restoring the——

Mr. JOHNSON. I was told you didn't have any backup. Where do you take them?

Mr. ASTRUE. There are two types of backup here. And there has been confusion, even when I was talking to computer people recently, they got confused about it. And it is probably my fault in terms of communication.

So there are two types of backup. There is the computer power that actually runs the system, and then there is the storage for the data. So we take the data——

Again, if I am making a technical error, we will correct this for the record.

But, basically, we take the data on a daily basis, except Sunday, from the National Computer Center to a separate offsite location.

So if there is a data storage type of problem, we can restore the data. The data doesn't disappear. We always have recent data.

The issue is if there were a problem with running the National Computer Center. Right now, we do not have an adequate backup facility. We rely on a commercial facility in New Jersey that would only allow us to run most of our critical workloads at 30 percent capacity, so the agency would have to ration availability among the regions. It would be catastrophic until we came back online.

Mr. JOHNSON. Well, if you copied those to discs and your computer system is so old, are there any computers that will run those discs after you copy them?

Mr. ASTRUE. We can run on the commercial facility in New Jersey. The problem is our system is so huge there just isn't a commercially available facility that has the capacity to run all the transactions of the Social Security Administration.

Mr. JOHNSON. What you are saying is we would have a failure. Would people fail to get their checks?

Mr. ASTRUE. All of our current beneficiaries would continue to receive their checks. However, there would be a delay in new beneficiaries getting their checks.

Mr. JOHNSON. Are you confident that we have a plan in place to rectify that problem? And it seems to me that 2012 for Durham is an awful long way off, and I don't know how long it is going to take us to build a new facility.

Mr. ASTRUE. Let me give you some good news on Durham.

I was just down at the facility about 2 weeks ago. The shell is up and completed. The first group of equipment is on the site and is being installed. It will take us about 6 months in all likelihood before we will get Durham up to where it will be the equivalent of the New Jersey facility, and then we will be adding additional capacity month by month after that.

In about 6 months, month by month, it will get better than the status quo. It won't be perfect. We are moving a little faster than before. I would say probably about another 18 months before we have Durham up to full recovery capacity.

So with the additional resources, I have approved some amendments, some additional changes to Durham that will add capacity at Durham, too. So we have that coming, too. So it is getting better. We have to hold on for approximately 6 months, and at least it will be better than the status quo every month after that.

Mr. JOHNSON. Thank you.

Thank you, Mr. Chairman.

Chairman TANNER. Thank you, Mr. Johnson.

Dr. McDermott.

Mr. MCDERMOTT. Mr. Astrue, I assume you are on the side of the clients in this issue. So the question I ask really, or to try to understand what is going on, have you spent all the money that we gave you last year for additional people and space?

Mr. ASTRUE. Absolutely. We went out and we had \$148 million over the President's request and most of that went into backlog reduction. The most expensive part of that is hiring new judges. We hired 190 new judges. The Inspector General at our request did a study of the fully loaded cost of an administrative law judge. An administrative law judge fully loaded is about three-quarters of a

million dollars a year. So you can see that for that \$148 million, most of that went into the additional judicial capacity.

Mr. MCDERMOTT. Have they been working full time for the last—

Mr. ASTRUE. They have.

Again, I know this isn't easy, so I have to plead for patience. The system is so complicated that it takes people a long time to become fully productive.

We are thrilled by this class of judges. I think we did a better job in selection. We did more careful background checks. These people are working very hard. They are getting very high grades on how they are treating people.

But in terms of productivity—I looked at the numbers just a couple of weeks ago. After about 9 months on the job for most of them, they are at about three-quarters of what a more experienced administrative law judge does. The good news is the trend line is up. They are going to get there. But it is probably going to take them 12 to 15 months before—

Mr. MCDERMOTT. Isn't the trend line about the numbers of days waiting is exactly the same for the last 2 years? It is over 500.

Mr. ASTRUE. With all due respect, Mr. Chairman, we are down to 488, I think, right now. Again, it is not dramatically down, but the average processing times are down.

Mr. MCDERMOTT. The source of this data is from you guys, Social Security Administration. Those two columns over here are the same, basically; and I am not sure—I don't want to argue hours or days or whatever, what I want to understand is what is it that holds up—why somebody is 75 percent productive; why not 100 percent?

Mr. ASTRUE. Because I think that—

Mr. MCDERMOTT. You have had a year.

Mr. ASTRUE. The complexity of the system is mind-blowing. They have to learn our rules about every possible medical disease or condition known to man, and our systems, which take time to learn too, because we are increasingly automated, but the systems aren't perfect yet.

We have got terrific people. I have no qualms about the effort that they have put in. I think a lot of these new judges are working extremely hard. And almost all of them are on a satisfactory track of productivity. There are a couple who are having some issues, but it just takes time.

And it is the same thing with claims representatives, tele-service representatives. They are not productive immediately.

Mr. MCDERMOTT. Anybody can see the trend of the line for the last 8 years. You don't have to be even close or have a reading test to see that trend. And the fact is that you are going to have 44 percent of your people retire by 2016. What is the planning for the future? Are we going to go into another climb in—because we lose all the people who have been there a long time and take this knowledge out the door with them, and we get these new people in that have to learn the system from the ground up.

Mr. ASTRUE. And in the good news, bad news category, with the economy changing, the retirement rates have slowed down a little bit. So it does buy us a little time.

Again, I wouldn't wish that on anybody who doesn't want to stay. Mr. MCDERMOTT. You are not wishing against Mr. Geithner and the President, are you?

Mr. ASTRUE. No, no. But we are trying to hire as many people as fast as we can. We have broadened and moved faster our SES development candidate pool. We have brought 14s in for the first time so that we have a little bit broader pool. We will have a slightly younger age distribution than what we had before to try to maintain some continuity.

We are doing what we can. But, at the end of the day, I can only hire as many people as we have the money to hire. We have moved extremely quickly.

Mr. MCDERMOTT. How about space? Do you have problems with space? Somebody says it takes 24 months to get space out of GSA?

Mr. ASTRUE. It does.

Mr. MCDERMOTT. What is the reason for that? The military can put 500,000 people in Iraq inside of 3 months. Why can't GSA move a few people and get some offices open?

Mr. ASTRUE. I hear this with some regularity. I actually think the people who are working for us have made this a top priority; and they are trying. But we have several issues.

First of all, we have to negotiate sometimes with as many as four different unions before we can go to GSA, because we have to have a plan that is going to work under the collective bargaining agreements. That takes some time. And then GSA has a process to try to make sure the bidding is fair and objective.

The kind of space that they choose—which I don't get to decide, they get to decide—makes a big difference. If they get space that is already existing, that fits our needs, that doesn't have to be redone, then we can often beat that 24 months. But sometimes they build space from scratch. Sometimes they will renovate. Sometimes they find space that is in move-in condition.

We try to expedite this as much as we can. They have an inventory of excess space, and we have been all over that list. And we will sometimes change where we want to be if it doesn't make that much difference, if we actually think we can get into the space faster.

So we have moved from having too much physical space, because we lost so many employees that we were awash in space. When we all of a sudden are trying to hire 5,000, I think we are going to be okay for this fiscal year, but it is a potential limitation, particularly getting the space in the right places. Because, for 20 years—and I don't know why this was true—the agency underallocated in the Midwest and the Southeast. And if you look at where the most backlogged hearing offices are, almost all of them, with all due respect to some members to whom this generalization won't apply, they are mostly in those parts of the country, and that is where the new hearing offices are going. We are pushing to get them open as quickly as we can, and we hope there will not be a limitation next year.

Mr. MCDERMOTT. Thank you. I apologize for taking more than my fair share of time.

Chairman TANNER. We will go, with the permission of the Committee, to two over here, since we have a great attendance this morning and a very highly interesting subject here.

So may I call on Mr. Stark.

Mr. STARK. Thank you, Mr. Chairman. Mr. Astrue, thank you.

If I could just switch to a topic that has been a concern of mine for some time, and that is the issue of 30,000 children who receive SSA benefits and are in foster care. I don't want you to go auditing this, but, as someone who receives this form for his own children each year, I am aware of how closely you keep track of what my children receive and what I do with that. But I am afraid that you don't keep as close track of the money that these children receive.

For the benefit of my colleagues, children who for one reason or another, SSI or because of disability or because of a parent who is disabled or dead, often receive Social Security benefits, a couple hundred bucks a month. And if they happen to be in foster care, I think it is fair to say that almost automatically this money goes to the State.

And States vary in how they use that money. I suspect there are a few States which just dump it into the general revenue and could not account for the fact that it is used for these children. And there are arguments. Some say, why should foster children, who are entitled to a Social Security benefit because of a disability or lack of parenthood, have to pay out of basically their funds for foster care when other children don't? And I was going to see if I could ask Mr. Astrue if they are doing anything to review this.

There is a system by which the representative, I guess it is called, is selected. But I doubt very much if you audit the States to see that each kid is entitled to some of this money. And the end result is that these are foster children who in many cases have mental disabilities, other—wherein a few thousand dollars when they mature out of foster care could be a great advantage, either a way to get to college or a way to get their first apartment for independent living.

And I guess my question is, are you doing anything now to study or consider how the States apply this money—I know California does a good job and other States, too. But, as I say, I think some States take the money and pop it into general revenue. Is there any program going on now in Social Security that is reviewing either how a representative is selected or what they do with the money?

Mr. ASTRUE. We know your interest, and I think it is a fair point, and it is on our list to talk to OMB. They are only up for business recently for anything but emergency issues, and we have a fairly long list of things that we would like to talk to them about. But we are prepared to look at that.

I think, as with all questions with rep payers, we do have to go carefully, because we want to make sure that we don't discourage people from being rep payees or state agents. We do have difficulty in a lot of the country getting qualified rep payees.

Mr. STARK. It is a very small amount for most States, but these are, it seems to me—

Mr. ASTRUE. Again, I give you credit for your leadership in this area, because you did encourage us also to talk to California about

the issue of seamless continuation. There were foster care children getting lost in the cracks when they were re-reviewed under the adult standards.

Mr. STARK. When they age out.

Mr. ASTRUE. We actually worked with Secretary Wagner in California on that. We have an improvement. It is a little awkward, but I think they are pretty happy with it. And we are now using that in other States.

But part of what we want to do when we talk about foster care more broadly with OMB is to identify ways to make that a little bit more elegant and a little bit more efficient, too. So we are looking at that as well.

Mr. STARK. Thank you very much. And I want to particularly thank your employees in both the Oakland and San Jose office for the wonderful service they give our—thank them for me.

Mr. ASTRUE. Thank you. I will do. Thank you, Mr. Stark.

Chairman TANNER. Thank you, Mr. Stark.

Mr. LINDER.

Mr. LINDER. Thank you, Mr. Chairman.

Commissioner Astrue, you mentioned an administrative law judge who in his contract doesn't hear any cases because he is a labor union leader and he is full time on the labor union. How many are there such as that?

Mr. ASTRUE. I believe the contract is a little complicated, but my understanding is that there is one who clearly does not have to hear cases, and that is the president of the union.

There are, if I remember correctly—and I apologize if I don't do this correctly from memory—I believe there are 125 other union officers who at least under some circumstances do reduced time and how much reduced time gets a little complicated. So what I would prefer to do, rather than make a mistake on this, is double check that number and give you the full details of the collective bargaining agreement in that regard.

Mr. LINDER. All right. Thank you very much.

[The information follows:]



May 29, 2009

The Honorable Sam Johnson
Ranking Member, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Johnson:

Thank you for your April 9, 2009, letter requesting additional information to complete the record for the "Joint Hearing on Eliminating the Social Security Disability Backlog," held on March 24, 2009. Enclosed you will find the answers to your questions.

I hope this information is helpful. If I may be of further assistance, please do not hesitate to contact me, or your staff may contact Angela Arnett, our Acting Deputy Commissioner for Legislative and Regulatory Affairs, at (202) 358-6030.

Sincerely,

Michael J. Astrue

Enclosure



May 29, 2009

The Honorable John Linder
Ranking Member, Subcommittee on Income
Security and Family Support
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

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I hope this information is helpful. If I may be of further assistance, please do not hesitate to contact me, or your staff may contact Angela Arnett, our Acting Deputy Commissioner for Legislative and Regulatory Affairs, at (202) 358-6030.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. Astruc', written over the printed name.

Michael J. Astruc

Enclosure

Questions for the Record Subsequent to the March 24, 2009 Hearing
Before the House Committee on Ways and Means
Subcommittees on Social Security and Income Security and Family Support

1. The President's Fiscal Year 2010 budget (p.18) says the Administration would like to "work with Congress to revisit asset limits for Federal means-tested programs." In the last Congress, senior Democrat Representative John Conyers introduced a bill (H.R. 3172) that would repeal asset limits for the Supplemental Security Income (SSI) program under the Ways and Means Committee's jurisdiction. Under the Conyers bill, any disabled person who currently has a low income would be eligible for SSI, regardless of how much he or she has saved in the bank or in stocks, regardless of how big a house he or she might own, and regardless of how much his or her car costs.

Does the Social Security Administration (SSA) support the policy in the Conyers bill? If not, what asset limit reform policy does the Obama Administration support, specifically with regard to the SSI program? Also, how many more SSI recipients would there be if asset limits were eliminated? How much would that cost?

We fully support the Administration's proposal to revisit asset limits for Federal means-tested programs. While we have not yet taken a position with regard to the specific provisions in H.R. 3172, we note that during the last 20 years, the SSI resource limit has not been raised and there have been no significant changes in the types or amounts of resources excluded from consideration.

Because we have limited data on the number of persons who might become eligible for SSI benefits if the asset test were completely eliminated, we would need to develop better data to fully explore revising these asset limits.

2. A January 8, 2009 Office of Management and Budget (OMB) report entitled "Improving the Accuracy and Integrity of Federal Payments" indicates that 12 programs accounted for approximately 90 percent of reported improper payments for a total of an estimated \$65 billion in fiscal year 2008. Included in this "top 12" list is the Social Security Administration's (SSA's) SSI program with estimated fiscal year 2008 improper payments of \$4.5 billion – a rate of over 10 percent. This 10 percent improper payment rate is up substantially from the fiscal year 2004 rate of 7.4 percent. What are the main causes of these improper payments, and what is the SSA doing to reduce the number of improper payments? What can Congress do to help with this effort?

The amount and number of incorrect payments have grown primarily because we have had to reduce the number of redeterminations due to a lack of resources. As discussed in my testimony, we are now beginning to increase the volume of redeterminations. In FY 2009, we will perform 1,711,000 redeterminations, an increase of 490,000 over the FY 2008 level. As part of a government-wide effort to reduce improper payments, the FY 2010 President's Budget includes a significant increase in our funding for program integrity activities, including redeterminations. In FY 2010, we plan to process 2,322,000 redeterminations, which would be over 600,000 more redeterminations than we expect to complete in FY 2009.

In FY 2008, the two major reasons for improper payments in the SSI program were recipients' failure to fully report wages that they earned or funds that they held in financial accounts. Between FY 2004 and FY 2007, these types of improper payments grew to \$400 million and \$500 million, respectively.

To address these major causes of payment error, we have a number of initiatives underway that will permit us to obtain information we need to pay beneficiaries correctly. One such initiative is the Telephone Wage Reporting project, which permits working SSI recipients to easily report wages. We are gradually increasing the number of participants in the program. Another initiative is the Access to Financial Institutions project in which we access account information directly from the financial community. This project is currently operating in three States: California, New Jersey, and New York. The FY 2010 President's Budget includes language which would allow us to expand asset verification initiatives such as the Access to Financial Institutions project, if these projects are found to be as cost-effective as redeterminations.

3. **The President's budget request included an adjustment in the overall allocation for annual appropriations for program integrity reviews; but experience tells us that these allocations aren't ironclad, particularly when funding is provided through a continuing resolution or if some funds are later rescinded. Have you talked to OMB and the appropriators about some type of no-year capital budget to fund program integrity efforts or needed technology investments?**

Our FY 2009 appropriation allows us to begin to reverse the overall decline in program integrity reviews. The FY 2010 President's Budget provides us with \$758 million to further increase our program integrity efforts. These efforts will further ensure that the Government spends tax dollars efficiently and that we correctly pay benefits only to those persons who are eligible.

In FY 2009, we plan to process 1,079,000 periodic CDRs, including 329,000 medical CDRs. The President's budget allows us to maintain the higher level of medical CDRs in FY 2010. We also plan to process 2,322,000 SSI redeterminations. Even with this increase, we will still perform fewer program integrity reviews than we did earlier in this decade.

We have had tight budgets in the recent past, and when resources are limited, we must balance our program integrity efforts against maintaining service to the public. Sustained, adequate, and timely funding is vital to ensuring our ability to meet both our important service and stewardship commitments. The additional funding provided by Congress in FY 2009 is helping us make a positive difference in all of the work we do.

Regarding a no-year capital budget to fund needed technology investments, we have considered this and are extremely grateful for the additional \$500 million in no-year funding for a new National Computer Center. We look forward to discussing with you how the President's Budget will help us with other necessary investments to modernize our information technology infrastructure and provide 21st century customer service to the public.

4. Please explain how average hearing processing time is defined. Why is there so much fluctuation in the hearing offices' numbers?

We define average processing time (APT) as the average number of calendar days from the hearing request date to the disposition date for all dispositions during a reporting period. Differences in data can occur because we may be calculating APT for different reporting periods. For example, the APT for a certain month usually would be different than the APT for FY to date, i.e., calculating APT for all dispositions from the beginning of the fiscal year to the date the APT is calculated. The best barometer for APT is the fiscal-year-to-date calculation. In addition, the APT varies from hearing office to hearing office because some offices have more aged cases than other offices. Thus, offices with high numbers of aged cases due to large backlogs and offices that assist other offices in processing their aged case workload tend to have higher APTs.

Due to the many obstacles to expansion of the hearing offices, the location and size of the hearing offices is essentially the same as it was twenty years ago, even though the demographics of the claimant population have changed dramatically. We have undertaken with our recent expansion to take changed demographics into account, which is why the expansions are focused in the Rust Belt and Southwest.

5. Last year, for the first time, your Chief Administrative Law Judge (ALJ) set a production expectation for the Agency's 1000+ judges. He asked each judge to process between 500 and 700 cases during the year. On average, how many cases is that per day? How did your Chief Judge arrive at this number? What are you doing about those that failed to achieve the goal?

The Chief Administrative Law Judge (ALJ) requested all ALJs to process 500–700 dispositions each fiscal year. Since there are approximately 250 work days in the fiscal year, each ALJ would need to decide, on average, between 2 to 2.8 cases per work day. We used personal experience and historical data to set the goals. The Office of the Inspector General (OIG) performed an independent review in February 2008 and agreed that this ALJ productivity level was reasonable. Combined with other backlog initiatives, we will eliminate the hearing backlog by 2013 if the ALJs meet these goals.

We currently use benchmarks and timeliness measures to address ALJ performance issues. We have established benchmarks for processing cases through all major steps, from receipt of the hearing request to a decision. We counsel ALJs whose case processing takes longer than the benchmarks. In addition, we have formed a cross-component workgroup to review issues related to ALJ performance, including identifying the steps we can legally take to establish an acceptable productivity level. Until we complete this review, we will continue to address issues related to ALJ productivity based upon timeliness.

6. Data provided to Representative Tiberi regarding the Office of Disability Adjudication and Review in Columbus, OH suggests the number of pending disability cases has increased from FY08 to FY09. Pending cases have increased from 8,461 in FY08 to 9,640 in FY09 and the average number of cases per ALJ has increased from 826 in FY08 to 945 in FY09.

The current average annual ALJ production expectation of between 500-700 cases is significantly lower than the average number of cases pending per judge in the Columbus office. When will the number of pending cases in the Columbus office decrease? What resources are being used to help this office operate more efficiently, and are there any plans to add more Administrative Law Judges (ALJs) and/or other staff to increase case processing capacity?

Representative Tiberi accurately cited the data for the Columbus hearing office. The office ended FY 2008 with 8,461 cases pending, and at the end of February 2009, there were 9,640 cases pending. Also, at the end of February, there were 944.60 pending cases per ALJ, reflecting an increase over the 826.10 pending cases per ALJ at the end of FY 2008.

The Columbus hearing office began receiving assistance from the Springfield, MA hearing office in 2008 as part of our Service Area Realignment initiative. The Springfield hearing office is responsible for hearing cases from the Mansfield, OH, and Wooster, OH, service areas, which were previously heard by the Columbus hearing office. This fiscal year, the Columbus hearing office has also received assistance from the San Francisco Screening Unit.

In addition, we plan to establish a new hearing office in Toledo, OH, in FY 2010, which will service areas currently handled by the Columbus hearing office. We will closely monitor the Columbus hearing office's situation and if necessary, may transfer additional cases out of the Columbus hearing office or realign the Columbus hearing office's service area.

In FY 2008, we placed two additional ALJs in the Columbus hearing office, bringing the total number of ALJs to 10. The office has physical capacity for only 10 ALJs, so we cannot place any additional ALJs in that office this fiscal year. However, the hearing office plans to fill one additional support staff position this fiscal year.

ALJ productivity in Columbus is currently near the lowest in the country and we are hopeful that additional resources and counseling will improve their productivity.

- 7. In your written testimony, you said that you might need 1,400-1,450 ALJs to handle the increasing hearings backlog. What can the Office of Personnel Management (OPM) do to help you hire ALJs?**

The Commissioner recently spoke at length with OPM Director Berry about the short-term problem in hiring ALJs and our long-term issues, and asked that the register of ALJs be refreshed as soon as possible. The Commissioner and the Director have a shared understanding of the challenges that must be addressed and share a commitment to expeditiously addressing these challenges. In ongoing dialogue with OPM staff over the last several months, we have asked OPM to make three changes to the schedule for ALJ certification to better meet our needs.

First, OPM refreshed the register of eligible ALJ candidates by readministering the examination in 2008 and adding new names. On March 6, 2009, we received a certificate of eligible ALJ candidates.

Second, we have alerted OPM of our plan to hire 400 ALJs, which would bring the total to 1,450 ALJs. In addition, other agencies would hire ALJs from the same register. We have already requested and obtained certificates with enough highly-qualified candidates to enable us to hire about half of the 400. We will continue to work with OPM to ensure that on an ongoing basis the ALJ register contains enough qualified candidates to meet our needs.

Third, we asked OPM to refresh the register no later than November of each year. Doing so would allow us to hire ALJs early in a fiscal year and ensure that the newly-hired ALJs are productive through a greater portion of that fiscal year than if we had to hire ALJs later in that fiscal year.

Finally, OPM has the authority, where appropriate under the applicable statutory and regulatory criteria, to grant dual compensation waivers so that annuitants may be reemployed without salary offset. OPM recently gave us dual compensation waiver authority for specific mission-critical positions which support the work of the ALJs. The authority expires December 31, 2010, and is to be used to meet staffing needs related to the American Recovery and Reinvestment Act. Under our dual compensation waiver authority, reemployed annuitants must perform duties that directly or indirectly reduce the disability and retirement claims backlogs. Alternatively, they must train and mentor recently hired, reassigned, or promoted staff who performs those duties. OPM previously has granted dual compensation waiver authority to reemploy retired ALJs under appropriate circumstances.

8. **Are electronic disability folders being used by all of the hearing offices? Would you say that the use of technology, specifically the use of computers, is a cornerstone of the hearings business process? Are all judges computer literate? If not, how many aren't and what impact does this have on the rest of the employees in that judge's office? What's being done to bring these judges into the 21st century?**

Yes, all hearing offices use electronic disability folders. Electronic folders provide reliable accessibility and allow for more efficient workload processing as work can be moved "seamlessly" among components. It became abundantly clear during our response to Hurricane Katrina that maintaining electronic rather than paper files was a much more efficient, and safer, way to do business. We house the electronic files on remote servers—away from office locations where calamity or natural disasters may damage them.

Our employees must have certain computer skills to function in the electronic case environment. For example, we use our Case Processing and Management System to provide information and to move work through the electronic business process. All new ALJs receive electronic folder training just as all judges received the training when we introduced electronic folders. As in any organization, our employees, including our ALJs, have varying degrees of proficiency in using these tools.

With the impending rollout of the standardized electronic business process, we will provide additional "hands-on" training. Currently we are surveying all ALJs to determine the level of computer proficiency within the ALJ corps. The results of this survey will help determine what additional training is needed to assure that all ALJs can proficiently process our electronic

workloads. We do agree, however, that judges who refuse to use electronic disability folders are slowing justice for claimants. We are actively taking steps to address this issue.

9. **Page 4 of your written testimony includes some stunning numbers about the workloads you face. For example, the SSA verified about 1 billion Social Security numbers (SSNs) last year, which is an amazing 270 times the number of retirement and survivor claims you processed (3.7 million). How much of that Social Security number (SSN) verification caseload is automated, as opposed to comprising a significant employee workload? On page 21 of your testimony, you discuss how you are developing strategies to reduce SSN related workloads. Please provide more specifics on these efforts, including what resources they might free up for other work.**

The vast majority of the Social Security number (SSN) verification workload is automated. However, mismatches resulting from verification processes generate significant work for our field offices.

Currently, State vital records agencies in all 50 States, plus the jurisdictions of New York City, the District of Columbia, and Puerto Rico, participate in the Enumeration at Birth (EAB) process. EAB, which began as a pilot in 1987, allows parents to request SSNs for their newborns as part of the hospital birth registration process. Approximately 96 percent of SSN cards for newborns are issued via EAB.

Our Quick, Simple, and Safe SSN initiative focuses on using automation to improve service and free up field office resources in the enumeration process. Included in that initiative are:

- **Decrease the Demand for Replacement SSN Cards:** As part of this effort, we are promoting the use of our electronic services and data exchanges, as appropriate, to minimize field office traffic. For example, we have verification systems available to, and data exchanges with, the States and the U.S. military, yet State agencies and military recruiters frequently send persons to our field offices to apply for replacement Social Security cards when they could verify the SSNs on-line more quickly and more easily. Increasing the use of our electronic verification systems would result in decreased demand for replacement Social Security cards.
- **Use Video Conferencing Technology:** In 2008, we began to test the use of video technology to offer persons—who would otherwise travel long distances to reach a field office—the convenience of filing for replacement SSN cards via video. We have used video technology to conduct claims-related business in the Denver region for over 5 years. In October 2008, we began a pilot in North Dakota to use video technology in the SSN application process and will expand the pilot to Wyoming in April 2009 in order to gather sufficient information to analyze the pilot's success.
- **Explore On-Line Replacement Cards:** We are developing a process that would allow applicants to complete SSN replacement card applications online. After we have developed an authentication protocol, we will be able to issue some cards without the applicant visiting a field office. Other applicants will still be required to submit documentation by mail or in person at a field office or card center.

- **Implement Signature Proxy for SSN Cards:** Signature proxy allows applicants for original SSNs and replacement SSN cards to apply for the card without providing a "wet" signature, thus eliminating paper from the SSN application process. The new, redesigned SSN application system called SSNAP will use signature proxy. We will begin the SSNAP phase-in in August 2009. Signature proxy is critical to the implementation of on-line replacement SSN cards.
- **Expand Enumeration at Entry (EAE):** We are negotiating with the Department of Homeland Security (DHS) to expand the EAE process, in which DHS and the Department of State collect enumeration data and take SSN applications as part of the immigration process.
- **Research Auto Cards at Marriage/Divorce:** We are researching the feasibility of automatically issuing corrected SSN cards at marriage and divorce. If implemented, the project would involve Federal/State collaboration in which State agencies electronically collect information, such as name changes, necessary to update our SSN records. This project would expand the role of the State vital records agencies.

10. As Commissioner, we know a key priority of yours is ensuring as many of your employees as possible are directly serving the public in order to address the increasing number of new and backlogged claims.

- **How many people deliver direct service to the public?**
Presently, 55,692 employees (or 86 percent of all employees) are in direct service positions.
- **How many people support those delivering direct service?**
We have 8,919 employees (or 14 percent of all employees) who support the direct service employees.
- **How many people work in Headquarters?**
A total of 8,089 employees (or 13 percent of all employees) work at headquarters.
- **How many people work in Regional Offices?**
A total of 1,948 employees (or 3 percent of all employees) work in regional offices.
- **Are you hiring those who directly serve the public (through field offices, hearing offices, phone centers, etc.) at the same rate as Headquarters and other support personnel?**
No. We are hiring for direct service positions at a higher rate than support staff positions. Ninety-four percent of our new hires are in direct service positions.
- **What are you doing to ensure as many of your employees as possible are serving the public?**
Our number one priority is to hire front-line staff who directly serve the public. However, those front-line employees cannot provide the best possible service without sufficient support staff to develop the service delivery tools required to get the work done and to get it done with greater efficiency. Support staff are critical in our efforts to coordinate work,

improve and expand existing automation, and continue development of our telephone and Internet services. Support staff employees also work to improve our in-office service delivery by conducting the analysis to streamline policy, establish Social Security Card Centers, and provide self-help computers and video service delivery. Support staff also conduct administrative tasks, such as processing personnel actions, writing policy instructions, and carrying out budget oversight.

11. The incoming request did not include a Question #11.

- 12. While over 53% of the SSA staff is eligible to retire by 2017, new OPM estimates indicate 2,100 federal employees expected to retire between 2009 and 2011 will delay retirement due to the economy. How will the SSA's workforce be impacted? Does this change your hiring plans? The current Field Office Management Association President has indicated that this delay provides an increased opportunity for mentoring new employees. Does the agency have plans to improve service delivery training given the larger numbers of experienced staff available?**

Our statistics show that the downward trend in the U.S. economy has had minimal effect on retirements in our workforce. Our retirement projections have been within the expected range. Therefore, we do not anticipate that OPM's estimate of delayed retirements across the Federal Government will have a significant impact on our agency.

We base our hiring plans on our budget, on the expected level of our workloads, and on the number of employees whom we anticipate will leave the agency. While the number of employees retiring in FY 2008 decreased slightly compared to the previous 4 years, our workload demands have steadily increased. This year, we plan to hire more employees than we anticipate losing in order to meet our rising workload demands.

Mentor support and on-the-job training are vital to the success of our employees. We mentor all newly-hired employees according to their needs.

In FY 2009, we will begin developing a pilot for transforming entry-level training for direct service employees. We plan on using different training modalities such as Video on Demand, hands on learning, online lessons, and Interactive Video Training. Our plan will increase the use of technology for training as well as address the learning styles of four generations of employees working at our agency.

- 13. State Departments of Motor Vehicles are moving in the direction of promoting online customer service by charging a small fee for people who continue to seek face to face services. Is that something the SSA is considering? What is the SSA doing, and what options are you considering, to allocate the SSA's resources to deliver efficient customer service?**

We have no plan at this time to charge fees for our program-based services, but we understand that Congress may need to consider this option for certain services. We currently charge fees for the work we do to respond to non-program requests by third parties, such as insurance companies requesting disability information or mortgage companies requesting Social Security

number verifications.

In addition to placing employees in key locations, we also have a broad array of initiatives under way to improve our customer service and make it more efficient. These initiatives include efforts to further automate complex workloads, to streamline policies and procedures, to create new and improved Internet and telephone service options, and to improve training for our front-line service employees. We are also using innovative technologies within our field offices to improve customer service. For example, in some offices we have placed televisions in waiting areas to inform the public about our services. In other offices, the public has the option to conduct business on-line with a self-help computer that links to our Internet services, rather than waiting for an available customer service representative. Additionally, Video Conferencing Technology, in field offices and at third party locations provides claims-related service to customers in remote areas and helps handle spikes in office visitor traffic.

14. How do the SSA's technology costs per employee compare with other similar industries? Are there activities that the SSA could automate with relative ease that would free staff resources but due to other priorities have not been done? If so, what are they? Please explain how automation requests for the Agency are prioritized.

In FY 2008, the average information technology (IT) cost per employee was \$13,706.¹ The December 15, 2008, Gartner paper "IT Key Metrics Data 2009: Executive Summary" reports average IT spending per employee of \$24,823 for the insurance industry and \$24,391 for the banking and finance industry.

We focus our automation efforts on major projects requiring substantial IT investments, such as:

- automating the disability claims process;
- developing web-based applications that will increase our ability to provide services over the Internet;
- initiating seamless processing, which will integrate data collection, development, and adjudication; and
- developing health information technology to request, receive, and review health records.

The Information Technology Advisory Board (ITAB) governs the agency's IT investment decisions. The ITAB is chaired by the Chief Information Officer and is composed of the Acting Deputy Commissioner of Social Security, the Chief of Staff, all Deputy Commissioner-level executives, and other executive staff. Its primary responsibilities include prioritizing all requests for automation. The driving forces behind our process include, but are not limited to, return on investment, legislative and court mandates, and audit findings and recommendations.

A request for automation starts as a proposal. Lower level review panels, known as "portfolio teams," review and evaluate the proposals for their anticipated return on investment and to ensure that they will promote the goals and objectives in our Strategic Plan. The portfolio team passes its recommendations to the ITAB for its consideration. The ITAB meets at least four

¹ We computed this per employee cost by dividing our total FY 2008 IT budget (\$1,074,204,523) by the total number of full-time, part-time, and State disability determination service employees (78,376).

times a year to create, and then modify, a two-year IT plan based on portfolio team recommendations and to make other IT investment decisions.

- 15. At the hearing, several individuals mentioned the SSA's need for additional resources to hire and train more workers. The following is from a February 9, 2009 SSA Inspector General document: "We determined that on average 1,450 out of 71,000 SSA employees (approximately 2 percent) had instances of AWOL [absent without leave] each year from 2005 to 2007." Is this a real problem? What steps have you taken to ensure current SSA employees are actually showing up for work and putting in a full and productive day on the job?**

We believe the use of AWOL in our agency is not a problem considering the total number of hours worked by our employees compared to the total number of AWOL hours. Our employees work over 135 million hours each year, and approximately 100,000 hours are charged to AWOL. Thus, AWOL hours represent about 0.07 percent of total hours worked.

The February 2009 Inspector General's report stated that employees are charged AWOL for a variety of reasons that fall under three main categories: 1) employees who fail to request leave properly, 2) employees who essentially abandon their positions with no intention of returning to work, and 3) employees who are legitimately ill and have exhausted all available accrued leave, donated leave, and entitlements under the Family and Medical Leave Act.

We continue to address this important human capital issue with managers. Through ongoing training, such as Personnel Management Workshops, provided throughout the year, we advise managers on the various types of leave, proper leave usage, and related discipline to ensure the consistent and accurate application of leave policies agency-wide. In addition, our human resources professionals routinely advise supervisors and managers on methods to deal with employees who have leave-related problems, from the first time an employee fails to comply with leave rules through progressive discipline for AWOL. We also provide information on personnel issues through our online websites as well as Interactive Video Training broadcasts on such topics as "Effective Leave Management." The broadcasts are available to all supervisors nationwide through our websites as well as by Video on Demand.

- 16. In your oral testimony, you said that the error rate of online applications was not significant. What is the accuracy rate of claims filed online as compared to claims filed in a Social Security office?**

We track the accuracy rate of claims by determining whether payments awarded in the application process are accurate based on our policies and procedures. In FY 2008, the overpayment dollar accuracy rates were 99.31 percent for field offices and 98.66 percent for Internet claims. The FY 2008 underpayment dollar accuracy rates were 96.84 percent for field office claims and 96.89 percent for Internet claims. The accuracy rate differences between field offices and Internet claims are not statistically significant. The FY 2008 Internet accuracy data do not include claims filed through iClaims, the new online Social Security benefit application, which was not operational until December 2008.

- 17. We are very concerned about the deteriorating condition of the National Computer Center (NCC) and your ability to recover all the data you need to process claims and issue checks in a timely manner after a disaster. What is the current and planned backup strategy for the SSA's computer system?**

If the NCC fails, there would be little loss of information, and beneficiaries would continue to receive benefits.

We currently maintain disaster recovery capabilities using a commercial hot-site recovery location. Each year we test the process and procedures necessary to recover our IT resources and data. As our data resources continue to grow, eventually the use of a commercial recovery site will no longer be feasible. Because of this limitation, we began construction of the Secondary Support Center (SSC) and initiated the Information Technology Operations Assurance (ITOA) project.

We plan to move part of the NCC's information to the SSC beginning this month. We will continue to create multiple backup copies of critical data on a daily basis. One copy will remain onsite within the NCC, and the remaining copy will be shipped offsite. Thus, should the NCC be damaged or destroyed, the most that would be lost is the last 24 hours of data.

Under the ITOA project, we will copy the data resources of the NCC and the SSC to each other daily. We will equip each site with computing capacity that will allow it to assume the service delivery requirements of the other site should there be a failure. The goal is to provide for recovery of a failed data center within 24 hours and with no more than 1 hour's data loss. The ITOA project is currently underway and on schedule for completion in calendar year (CY) 2012.

While the ITOA project moves toward completion, we are rapidly increasing the SSC's capability to provide additional protection for a loss of the NCC. We will add capacity to the SSC in CY 2009 to allow it to support data recovery operations for the NCC. We will continue to use the commercial hot-site until we can upgrade the SSC and test the recovery process to ensure all critical systems and data are protected.

- 18. You have been given substantial funds to establish a new NCC. What is the timeframe for its completion? Do you have a cross-component response team ready to respond to inquiries from the General Services Administration and OMB? What can be done to expedite this process and how can Congress help?**

We are working with the General Services Administration (GSA) to establish an accelerated project plan to complete construction of the new NCC by October 2013. We project the information systems equipment set-up and integration to be phased in over an 18-month period following construction.

We will work closely with GSA during all aspects of the facility's construction. As integral members of GSA's project team, we provide specific facility infrastructure requirements based on Uptime Institute's Tier 3 standards for data centers and will ensure the building accommodates our IT infrastructure needs for the next 15-20 years.

We oversee all work done by GSA and its contractors through all phases of our construction projects; the new NCC, which we are referring to as the National Support Center, is no exception. Both we and GSA have assigned some of the most highly qualified project managers to the project team. Our employees on the project include Electrical Engineers, Mechanical Engineers, Fire Prevention Engineers, and IT Specialists who participated in the design and construction of the SSC. They have been working on an accelerated schedule for this project since February, when we received the American Recovery and Reinvestment Act funds. In addition, GSA hired specialized construction management consultants and will hire IT consultants to assist on the project.

We appreciate your offer to help, and if we identify any obstacles that we need your assistance to overcome, we will notify you immediately.

19. Please provide the following information for each union that represents employees at the Agency. Also, please provide the number and percent of employees not represented by unions and the positions they hold.

• **The number and percent of employees represented.**

Four unions represent our employees: the American Federation of Government Employees (AFGE), the International Federation of Professional and Technical Engineers (IFPTE), the National Federation of Federal Employees (NFFE), and the National Treasury Employees Union (NTEU). The following chart shows the number of bargaining unit employees represented by each union.

Union	Number of Bargaining Unit Employees Represented	Percent of Total SSA Employee Population
AFGE	47,849	74.3
IFPTE	995	1.5
NFFE	38	0.1
NTEU	1,025	1.6
TOTAL	49,907	77.5

• **Please provide the number and percent of employees not represented by unions and the positions they hold.**

There are 14,465 employees who are not represented by unions. These employees represent 22.4 percent² of the total employee population. They are divided into two categories:

- There are 851 employees who would be eligible for bargaining unit coverage based on their duties, but who are not represented because they work in offices with no union representation (i.e., in offices where no union has won an election to become the representative of the employees in the office). These employees represent 1.3 percent of the total employee population.

² This number and the 77.5 percent above do not add up to 100 percent because of rounding.

- There are 13,614 employees who are ineligible for bargaining unit coverage based on the duties they perform. These employees represent 21.1 percent of the total employee population.
- The number who work full-time on union activities (and number of hours worked by year for the last 5 years, including cost).

The following chart breaks out, by union, the number of full-time union representatives, the hours they worked, and at what cost.

YEAR	FULL-TIME UNION REPRESENTATIVES	AFGE	IFTPE	NFFE	NTEU
2004	Full-Time Union Representatives	149	2	0	3
	Hours Worked	218,968	2,601		4,581
	Cost	\$9,133,021	\$112,225		\$191,045
2005	Full-Time Union Representatives	122	4	0	4
	Hours Worked	178,645	5,659		6,145
	Cost	\$7,721,538	\$244,577		\$266,533
2006	Full-Time Union Representatives	12	4	0	4
	Hours Worked	19,200	5,863		6,207
	Cost	\$922,553	\$201,727		\$258,224
2007	Full-Time Union Representatives	12	3	0	5
	Hours Worked	19,167	4,370		7,219
	Cost	\$938,289	\$213,926		\$353,394
2008	Full-Time Union Representatives	12	1	0	4
	Hours Worked	20,600	1,480		4,855
	Cost	\$1,046,578	\$75,191		\$236,547

- The number who work part-time on union activities (and the number of hours worked by year for the last 5 years, including costs and the FTE of that total number).

The following chart breaks out, by union, the number of part-time union representatives, the hours they worked on union business, the cost to the agency, and the total number of full-time equivalents (FTEs).

YEAR	PART-TIME UNION REPRESENTATIVES	AFGE	IFTPE	NFFE	NTEU
2004	Part-Time Union Representatives	1,513	149	1	21
	Hours Worked	135,451	12,960	53	13,712
	Cost	\$5,648,804	\$540,855	\$2,210	\$571,841
	FTE	65.12	6.24	0.03	6.59
2005	Part-Time Union Representatives	1,502	78	1	18
	Hours Worked	138,229	10,807	113	8,756
	Cost	\$6,017,692	\$467,086	\$4,864	\$378,438
	FTE	66.94	5.20	0.05	4.21
2006	Part-Time Union Representatives	1,356	77	1	18
	Hours Worked	140,097	10,857	256	9,015
	Cost	\$6,731,593	\$521,663	\$12,301	\$433,187
	FTE	67.53	5.22	0.12	4.33
2007	Part-Time Union Representatives	1,366	78	2	18
	Hours Worked	172,093	11,897	71	8,100
	Cost	\$8,424,532	\$582,398	\$3,476	\$303,021
	FTE	62.74	5.72	0.03	2.98

2006	Part-Time Union Representatives	1,280	85	1	14
	Hours Worked	178,008	17,003	64	7,332
	Cost	\$8,043,554	\$853,834	\$3,252	\$372,591
	FTE	85.58	8.17	0.03	3.53

- An overview of how agreements are negotiated and when they are due for renegotiation.

The current SSA/AFGE National Agreement expires August 15, 2009. The agency's management team continues to prepare for the negotiations based on input from all agency components. Both parties have officially notified each other of their intention to renegotiate the existing National Agreement. Ground-rules negotiations are scheduled to begin on June 2, 2009. Historically, term negotiations with AFGE have taken between 12 to 15 months.

We are also preparing for the upcoming term negotiations with NTEU. We have two contracts with NTEU. One contract covers Office of Disability Adjudication and Review attorneys in the regions and expires on January 31, 2010. The other agreement, which covers some employees in regional offices, expires July 1, 2009. We intend to renegotiate both of these agreements.

The current IFPTE-AALJ contract expires January 31, 2010, and we intend to renegotiate that contract as well.

20. Many concerns have been expressed about the impact a totalization agreement with Mexico could have on Agency workloads and the Social Security Trust Funds. Would you provide the latest specific information about the status of the totalization agreement with Mexico signed by then Commissioner Barnhart on June 29, 2004? What are the specific stages of the approval process and where exactly is this agreement in the approval process?

During totalization negotiations, United States (U.S.) negotiators explained to their Mexican counterparts that U.S. statutes always take precedence over totalization agreements.

After the agreement was negotiated, but before it was signed, Congress enacted the Social Security Protection Act (SSPA) of 2004.³ Accordingly, we attempted to have Mexico affirm that under U.S. law (and the totalization agreement) we would not be able to pay benefits to persons who have violated immigration law. To date, the Mexican Government has not confirmed that it agrees with our view of the effect that the SSPA has on the totalization agreement.

Five years have passed since the Mexican totalization agreement was negotiated. The terms and Trust Fund costs associated with any agreement negotiated five years ago are likely to have changed.

³ Section 211 of P.L. 108-203, which applies to alien workers whose SSNs are first assigned after 2003, provides that benefits cannot be paid based on the earnings of any noncitizen unless SSA has issued the noncitizen an SSN indicating authorization to work in the United States.

Once we consider a totalization agreement to be final, the DOS, the National Security Council, and the Office of Management and Budget must then review the agreement. Finally, the White House decides whether to present any such agreement to Congress. If so, the President sends the agreement to Congress.

Mr. LINDER. Why do you need for labor unions to approve space with the GSA?

Mr. ASTRUE. The working conditions are covered under collective bargaining agreements. So we have to, as a general matter, as I understand it, go through and make sure that everything in the proposed space is compliant with the various collective bargaining agreements. And, again, ODAR, where we are doing the hearing of-office expansion, has all four unions that are representing ODAR. So it is probably more complicated at ODAR than it is at most of the rest of the agencies.

Mr. LINDER. Why isn't that just administrative duty?

Mr. ASTRUE. Because that is the way the Federal Labor Relations Act is written, is my understanding. We are just complying with the statute.

Mr. LINDER. The Federal Labor—

Mr. ASTRUE. That is my understanding. I don't purport to be an expert on it, and it does get highly technical. We have an office that deals with those issues. But it is my understanding that those are the types of issues that we are required to bargain.

Mr. LINDER. I share Sam Johnson's concern about your computer capabilities and the age of the technology. Have you done any studies as to whether it would be less expensive to outsource it?

Mr. ASTRUE. We did. And, actually, this study was, I believe, commissioned under Commissioner Barnhart's watch. There was a Lockheed Martin study that took a look at the options and concluded that we really needed to have our own facility.

I think part of the issue is we have enormous constraints in terms of the sensitivity of the private information of the public that is in there. It makes it awkward to share with other facilities. We need a huge facility because of the scope. There just aren't data centers like that sitting around.

Mr. LINDER. You don't think Google and Microsoft have that kind of capacity?

Mr. ASTRUE. Actually, not for what we need. No, I don't think so. Even the great Microsoft I don't think has what we need on the shelf.

And you know, we live in an age where it is not just the physical attacks of terrorists, but there is an enormous—and I don't think the public really appreciates the—concerted and constant effort there is to commit cyber-terrorism. I don't know whether the Committee has had a recent confidential briefing on that issue, but it may be a good idea. And that also makes it very difficult to go the private-sector route with everything that I think we need to do in order to meet those kinds of defenses. I think we did make the right choice.

Again, I didn't like the answer in the beginning either; and we spent several months going back and forth looking at alternatives and seeing whether there was another way to do it. But I think we reluctantly concluded this was the best path forward. I know we got a lot of those same questions from Congress and tried to be as transparent as possible. We are very grateful that the Congress came to the same conclusion and so quickly, and it is going to make a huge difference for us going forward.

Mr. LINDER. Thank you, Mr. Commissioner.

Thank you, Mr. Chairman.

Chairman TANNER. Thank you, Mr. Linder.

The Chair will be pleased to recognize Mr. Levin.

Mr. LEVIN. Thank you. Thank you, Mr. Chairman.

Welcome.

Mr. ASTRUE. Thank you, Mr. Levin.

Mr. LEVIN. It is tempting for me to spend time talking about the problems in the district I represent, and these are immense problems, and we have talked about them. But I want to go beyond the vital local issues and get to the nub of this issue, and some of the discussion from the minority I think illustrates that. We have in recent times acted to raise the amounts of money that are available to you, right?

Mr. ASTRUE. Yes. In the last 2 weeks we have a real break from past practice, and I think it is going to make a big difference going forward.

Mr. LEVIN. So let me ask you this. You have been involved in this work for how long?

Mr. ASTRUE. It depends a little bit on how you look at it. Off and on for 30 years, probably 10 to some extent.

Mr. LEVIN. And involved with just this government entity, right?

Mr. ASTRUE. I was with HHS for 6 plus years, some of it entirely at Social Security but all that time at least partially doing Social Security work before I came back as Commissioner.

Mr. LEVIN. I want to ask you this. If the organization has adequate resources, do you believe that it is able to carry out the function of handling disability cases in an effective way?

Mr. ASTRUE. I do.

And let me add a couple of caveats to that. We have, I am persuaded, some of the very best people in government, and I include the people that do the work for us in the State Disability Determination Services. I don't think it is a question of the people. I think it has been a question of the resources.

We are facing all kinds of challenges now, particularly—you know, one of the things I am working very hard on—and I got bad news from New Jersey this morning on the way to the hearing—is that more and more of the Governors are furloughing DDS employees or putting hiring restrictions on, which is crazy. Because we pay the fully loaded cost. We pay their salaries. We pay for the overhead.

They are not saving any money by doing this to DDS employees. What they are doing is slowing up the processing of disability cases and keeping money out of their own States. And it is a real frustration to me. Again, we have persuaded a number of Governors not to do this. But we had another one in New Jersey who apparently decided to go ahead.

Mr. LEVIN. So you said, if the resources are there, you have no question about the capability of this governmental entity to do the job well?

Mr. ASTRUE. Yes, that is right, sir.

Mr. LEVIN. So what we heard earlier—and I want to look ahead, but this has to be very clear cut—that this institution under its leadership for a number of years that provided inadequate resources are essentially attacking the entity because it failed to provide the adequate resources. What you are essentially saying—and

somehow it wants to hopscotch into healthcare—that SSA, you are not capable of doing this because you are a governmental agency. Who appointed you?

Mr. ASTRUE. I was nominated by President Bush, and it was confirmed in the Senate in February of 2007.

Mr. LEVIN. And we welcome your efforts. And I really think that those who fail to provide adequate resources should not be the ones who are throwing the dagger at this agency. We in the last months have provided more resources instead of underfunding requests from the Administration. At times, we have gone beyond.

And I just say this because there is a real crisis in almost every place in this country. It is utterly disgraceful that people have to wait years—most of them clearly disabled, as it turns out—they have to wait years in order for a response. And the problem has not been because it is SSA running the show, the problem in good measure has been because of the failure of this institution under previous leadership to provide you the resources, as you say, that are necessary to carry out your work.

We are going to step up to the plate, and I hope we do that on a bipartisan basis, and we have done that.

Mr. Johnson has been strong. He hasn't thrown arrows at SSA. He has been working with us to provide the moneys that you need.

And the sad thing is, even though—and I finish with this—we provide more resources, it is going to take you years to begin to catch up. We have to step up to the plate here, not to try to use this problem as an argument over something totally unrelated. We will argue healthcare some other forum. We have got to give you the equipment, the resources, et cetera, that you need to end this disgrace.

Chairman TANNER. Thank you, Mr. Levin.

The Chair will go to Ms. Berkley, and then we are going on the rule of who was here when the gavel went down and then to Mr. Brady after Ms. Berkley.

Ms. BERKLEY. Thank you very much, Mr. Chairman, for calling on me; and it is very nice to see you again.

Last year, I shared with you the problems that I was having in my district, which encompasses Las Vegas; and you were very responsive to my concerns and my problems. As you are aware, with your help, Las Vegas ranked about seventh out of 143 offices nationwide last year with a wait time of about 325 days. It wasn't anything to write home about, but it is far better than what has happened this year when we have—where we have slipped to 60th with a wait time of 458 days.

I am asking you on behalf of the people I represent, and you know I have a very large senior population and growing population. And with the latest economic downturn, Las Vegas has suffered disproportionately; and it shows in the number of claims that continue to rise on a daily basis. What can you do and what can I do to help you ensure that Las Vegas doesn't slip any further? And what can we do to improve not only the quality of service but the number of people we have hearing these claims?

Mr. ASTRUE. Las Vegas, as you pointed out has been one of our better offices. But you are also correct that there has been some

slippage this year. That is not uncommon. This is why it is so hard to keep up on space, because the demographics change so quickly.

For the three judges who are there, you have one of the higher support staff ratios in the country. So I don't think it is that. But I am looking at your pending—your judges are staying productive, but the pending is going up. It is just a function of caseload.

So what we try to do if it gets really much worse than this, what we are trying to do is to take that pressure off of offices by moving cases electronically; and we will have substantial additional capacity in the coming months.

The Albuquerque National Hearing Center, which is actually designed to help offices in the western part of the country, if I remember correctly, should start to be operational next week. We have a much larger one in Chicago that will open up over the summer, and then we will have another one in Baltimore.

Right now, we don't have enough capacity in that way to help out those offices such as yours when there is a surge in cases. We will have that infrastructure in place to do an awful lot better in about 6 months. So I would say hang on. We will do the best we can.

We will look at it as well. We are looking at a potential expansion of additional hearing offices. It may be that if these numbers hold up that you need at least a fourth judge and we need to look at the space situation in Las Vegas. I suspect that somebody has already done that, and I am not aware of it. So let me do this. Let me supply for the record a little bit more detail, but we will be on it. We will get back to you with more information.

[The information follows:]

Ms. BERKLEY. I appreciate that.

Let me ask you something. You just stated, "if it gets much worse," how much worse does it have to get to be red-flagged? Because it is going to get worse in Vegas. It is very bad.

Mr. ASTRUE. So I have to be candid here. Even at 364 days, which is the most recent month, that is still significantly better than our National average.

Ms. BERKLEY. Well, I have 458 days. It was 325 days last year when we were seventh. We are in 60th place now with a wait time of 458 days.

Mr. ASTRUE. If you just have the October numbers, those numbers, for reasons I could take up the whole hearing explaining, are atypical. But what I have in front of me is FY09 through February, and what my staff is telling me is 364 days. I will check and verify that.

I will be honest with you, normally 364 is not a place where we intervene. We still have offices with this rate that are helping out others around the country. But as you get close to the median, we start looking—and the median right now is about 488, and we start looking at the possibility of additional help.

But I will be honest with you, it is not a science. It is an art. We are trying to do the best we can with what we have. We will have more ability to help offices. We should have about 30 additional National Hearing Center judges shortly.

Ms. BERKLEY. My time is up. Thank you very much.

Chairman TANNER. Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman, for holding this hearing.

And before I begin my questioning, I would point out that I think this is a bipartisan problem. Pending cases and the backlogs have not materially improved over the last 2 years under Democrat control of the House and the Senate. I think looking at Mr. Tanner and Mr. Johnson, we have bipartisan support for significant actions to reduce those backlogs and are committed to working with you to do that.

I want to turn to the issue of fraud in the disability system. By some estimates, it may be as much as \$11 billion in fraud. It is hard to quantify that, but that is one of the estimates. I think we all have a responsibility to taxpayers and the truly disabled to make sure these precious dollars aren't lost to fraud and those who are gaming the system. Recently I had the opportunity to meet with the Inspector General O'Carroll down in Houston with our Cooperative Disability Investigative Program. I got to look at, first hand, the teamwork.

On the front end of disability fraud, those who are applying for benefits and maybe feigning impairments, concealing medical improvement, and other fraudulent activities, it seems to me, at least in the Houston region in Texas, there seems to be a good job—we do a good job of catching fraud at the front end of the disability system.

On the back end, though, it appears to be just the opposite; that the backlog of continuing disability review, especially medical review cases, continues to grow. It is about 1.4 million today. It is anticipated it will grow another 100,000 to 150,000 cases next year. Those investigations on the back end take more time, more resources, and they are both the medical issues as well as those concealing work. At the end of the day, though, fraud occurs.

When we do launch these investigations, as Congress did, funded the 7-year program from 1996 to 2002, we made progress on that, dedicated funding to do that. Since then, Congress has not dedicated funding to those investigations and the backlog has grown and the funding recoupments have decreased or leveled off. It seems to me that studies show that we are saving between \$10 and \$14 for every dollar we invest in those fraudulent—investigations of fraud.

So the question is, Commissioner, what is the game plan for attacking that growing backlog of continuing medical reviews, disability reviews? And what are the resources you need to successfully investigate and prosecute those fraud cases?

Mr. ASTRUE. Thank you. Two questions. Let me deal with the CDI cases first. The Inspector General's office has done some great work with these units. It is a very high return to the taxpayer. The problem that we have with those units is the dollars compete against everything else that everybody wants us to do, and it is directly competing against service dollars. I think, until there is some sort of funding mechanism so that it refreshes itself, that it probably is going to be the case that, in the grand scheme, those efforts are going to be underfunded.

Mr. BRADY. Would a dedicated stream of funding help provide continuity and certainty when building those teams, because it is a team effort, in actually pursuing them?

Mr. ASTRUE. Absolutely. We have discussed this type of thing with OMB. I think they are interested in this and for program integrity work, generally looking for other ways so that this work doesn't diminish over time. You know, for most of this decade, not only did the backlogs get worse, the amount of program integrity work plummeted. So we have not only made a first dent in the backlogs, but we have also started increasing the program integrity work.

But we have some real issues in gearing up in that a lot of our capacity has been lost and it will take time to get up to where we need to be. So I think you will see in the more detailed President's budget that is coming next month, the proposal for fiscal year 2010. My sense is that they see that as a transition and they want to do more and better the year after, but they realize that we need to build up some capacity to get there. So my sense is that this new team at OMB is very concerned on the program integrity side.

Mr. BRADY. Would you present to at least to the Social Security Subcommittee and perhaps to the Income Support Subcommittee a plan for tackling that backlog and estimates of resources to do that? Because I think the subcommittee ought to take a look at what it is going to take in real terms as we weigh recommendations on budget issues and resources.

Mr. ASTRUE. What I would propose is, I think this will be a better conversation in about a month, after the President's budget is fully released, and we can see what the full assumptions are for next year and then we would be delighted to come up and have that conversation.

Mr. BRADY. I appreciate that.

Thank you, Mr. Chairman.

Ms. BERKLEY. Mr. Chairman, if I could state for the record, I have got a national ranking report average processing time, month ending 2-27-2009, which shows that the Las Vegas processing time is 458. So if you have something different, I would appreciate seeing it. Thank you.

Mr. ASTRUE. Mr. Chairman, if you give me just a moment; let me just talk here for a moment.

Chairman TANNER. Sure.

Mr. ASTRUE. Okay I think we have sorted it out. What I have in front of me are the statistics for this fiscal year, and I have been reassured that 364 is correct for the fiscal year. What you have is for the most recent month, which is February, and there are some reasons why, particularly when they are tackling older cases, there tends to be bizarre fluctuations from month to month. Month-to-month comparisons can be fraught with danger.

But you are correct that for the month of February, the average processing time was 458. What that may reflect is that they moved from run-of-the-mill cases to going back to hit some of the aged cases. I don't know, but we will give you a more detailed analysis. So I would like to say, I think we are both right.

Chairman TANNER. Commissioner, you told me something I was unaware of. I thought that the IG and the antifraud sector had its own budget. You said it was in competition with service dollars.

Mr. ASTRUE. They do, but—

Chairman TANNER. Am I incorrect in that?

Mr. ASTRUE. They have their own separate budget, but we also have the capacity with our administrative budget to spend more on antifraud if we choose to do so, and we could if we had the resources to do it. And I think a lot of us would like to do that. But right now, you know, you have to take that away from telephone service or CDRs or backlog reduction, and we just don't have the option of doing that.

In fact, there has been some concern as to some of the IG recommendations over the years. We have accepted about 2,500 of his recommendations in recent years of the 2,700 that he has made. And a lot of the ones we have not accepted, we just don't have the resources to do what they are recommending, usually from an anti-fraud point of view.

Chairman TANNER. On the CDR evaluations, I am told that that runs around 90, 95 percent, and 5 percent are found to be improved to the point where they are no longer eligible. Is that—am I in the ballpark?

Mr. ASTRUE. Let me double check. I think it is a little smaller than that.

No, you are correct, Mr. Chairman, that is about right.

Chairman TANNER. But CDR is different from fraud; is that correct?

Mr. ASTRUE. Yes, that is right.

Chairman TANNER. Basically which means you are doing a pretty good job on the front end of determining who is permanently disabled and who is not.

Mr. ASTRUE. Yes, that is right. And there are a fairly small number of cases where there is a possibility of medical improvement or it was borderline in the beginning. Probably about half the applicants, you don't realistically expect that there is any real chance that they will come off the rolls.

Chairman TANNER. All right.

Ms. Schwartz, you are recognized.

Ms. SCHWARTZ. Thank you, Mr. Chairman, and thank you for this hearing.

And I actually recall a similar hearing, I guess was it last year or 2 years ago—

Mr. ASTRUE. Last year.

Ms. Schwartz [continuing]. Where we had some of the same conversation, I have to say, about backlog, and I realize you are making some progress.

But certainly all of us in our districts hear from constituents who are very frustrated by the number of days and obviously that they have to wait, and they are all in some dire straits and feel that way.

I specifically wanted to ask you about something you mentioned in your opening comments which should help this process, and that is the use of technology and information technology, particularly transmission of the medical records and helping to expedite that situation. A couple of questions, if I may, on this because I have great optimism, if I want to put it that way, in the fact that technology in the healthcare field can make a very big difference in streamlining time and savings for all of us within healthcare deliv-

ery and personal healthcare, but in this situation as well, the ability to get that information and to review it quickly.

Now, there are some stumbling blocks on this, and one of them is your own system and the degree to which you can receive this information. But the other, of course, is the providers and whether they actually have the capacity at this point to provide you with that information and adequate information. So I want you to speak to that and the timing on, again, not only your preparation but those who are submitting that information.

The second question is the issue of consent and the role the applicant has in providing that consent. I assume they do it now in releasing the information, but making sure that that is secure. You again pointed out the degree to which there are opportunities for concern about privacy, but I would suggest that it is dealt with in healthcare situations, but maybe you want to speak specifically to how you handle very sensitive information that is now sent electronically and might be more readily available to others or not.

And the third question, if you would, is to speak to, you are not over-anticipating the good use of technology by reducing the number of people you need, the personnel you need, because in fact, we are not quite ready to do all of this and whether in fact you still have the adequate personnel to handle the applications in a timely fashion. And while I will say that Philadelphia is not worst on the list by any means, in fact, I think we actually do, I understand, a pretty good job with the offices in Philadelphia and the surrounding areas; we still are looking at almost 400 days, 377. Now you are reducing those number of days. That is a lot of days for people to wait.

So if you kept track of those questions, if you would speak to them. And if not, I will—

Mr. ASTRUE. If I miss one, remind me—

Ms. SCHWARTZ. I am very supportive of the use of technology and health IT. I think this is all to the benefit of my constituents and to those who are applying and can really help streamline the process for you and for your staff, but I do want to make sure you are prepared, that doctors' offices can get you that information, that you haven't reduced personnel too quickly in handling that, and that you have dealt with the issues of privacy.

Mr. ASTRUE. First of all, let me reassure you, there is no substitution of technology for people. I think a lot of the staff here will back me up. I have been up here regularly and often complaining about the fact that I don't have enough people and that the continuing resolutions have forced us to do some very damaging reductions in staff. And that is why we added, for the first time in the back of the written testimony, I know it is long and it is dull, but look at the end at staffing patterns and the effect of the continuing resolutions. They really have been devastating for us. So we need as many people as we can reasonably get. I don't think there is any likelihood Congress is going to give me more than we can productively use anytime soon, but we also need to use the best technology because we need to do both. We need to simplify our procedures when we can, too. We need all three in order to provide the best service that we can at any point in time.

Now, you are absolutely right that the health information technology could be incredibly important for us, and I want to give Deputy Commissioner Gray, who runs systems for us, credit because, of course, he takes heat every time a computer blows somewhere in the 60,000-employee agency. But he was very forward-thinking in realizing how important this could be for us. We expend an enormous amount of effort chasing down medical records from multiple sources, and often we make decisions on the basis of incomplete medical records, which is a source of error. People do the best they can as fast as they can, but there is a misunderstanding of HIPAA, too, and they don't want to, or they just simply don't, turn over records to us easily. So this is a big deal for us.

Ms. SCHWARTZ. That may be an issue that maybe we could be helpful if you are not getting the kind of response you need from a different department, a Federal agency. Maybe that is something, particularly as there is new administration, a new health IT, a head of that office who may be more responsive on this and be able to work with you on that.

Mr. ASTRUE. The key is, and maybe we should come up and brief you in more detail, that systems did a pilot with Beth Israel Deaconess Hospital in Boston, which because of John Halamka, who is now on our new Systems Advisory Board, is right in the forefront of health IT, and they have got more done there. We have had a pilot where we were working out the technical issues, privacy, security over the Internet, all those types of things that are raised by our using health IT and getting to a point where if there is a Beth Israel patient who authorizes us to get the records, we can push a button, and we have got it, and we have got a complete record. And it is a thing of beauty. It increases accuracy. It cuts down on administrative time. It cuts down on costs. And we are going to try to get as much of the country moving in this direction as quickly as we can, and it is still a work in progress. We are talking to 10 healthcare systems around the country to try to take the Beth Israel Deaconess model and use it as quickly as we can. And we have made some progress, I know, in Virginia. We have got other States as well.

Ms. SCHWARTZ. I am running out of time here, but I just want to say, there are a number of healthcare systems across this country. Obviously we have made a major commitment financially in the recovery package to scale that up to 70 percent of hospitals and 90 percent of physicians in this country within 10 years, but I realize that takes a while. But there are major health systems that do have electronic medical records that probably would be ready, willing, and able to help if they—

Mr. ASTRUE. Most of them are not quite there yet, but we think they are getting there very quickly. And you know, if we could, for instance, duplicate Beth Israel Deaconess with one of the ones that are further ahead, like Kaiser Permanente, which is a huge operation, it would be huge for us. We have worked out a lot of the technical issues. Again, there is still some fine-tuning of what needs to be done. I don't want to oversimplify the tasks that we have ahead of us.

Ms. SCHWARTZ. But you did get \$40 million in the recovery package. I am assuming that is going to help you move ahead—

Mr. ASTRUE. We can spend up to \$40 million of our \$500 million on health IT. We would—

Chairman TANNER. I hate to interrupt, but we have got many Members here, and we have got some time constraints.

Mr. Reichert, you are recognized.

Mr. REICHERT. Thank you, Mr. Chairman.

In my previous life, I was in law enforcement for 33 years, so I dealt with a lot of people that were attempting to get their Social Security checks and their Social Security benefits. And this was a long time ago, as you can tell by the color of my hair, unfortunately.

Mr. ASTRUE. At least you have hair.

Mr. REICHERT. Good point, sir.

I just want to give a little bit of a historical perspective. It seems to me, and not being very experienced in this whole—this is my first visit here to this Committee, and I am very fortunate to be here. But I think most American people look at IRS and Social Security, and it is a long history of problem after problem after problem. I don't think the backlog issue is something that has just occurred within the last 2 years or the last 4 years or 6 years or 8 years, as we might be led to believe by some Members here, but this is an issue that has been going on almost since Social Security began. Don't you agree?

Mr. ASTRUE. Yes. We had hearings on this issue, if I remember correctly, in the 1980s, when I was with the agency, and it is a tough one. I think part of what is going to be important for us to communicate more clearly is what we think a proper baseline is. It does take claimants some time to get legal representation and to accumulate their medical records, and then to give them time to do their job.

And we have had a good discussion with the advocacy groups about how much time that is, and they said, you know, the preparation time you give us is too short. So we are looking at 270 days as the baseline for delivering a hearing, and part of what is factored in is probably 60 to 75 days for the claimants' representatives to get ready and a little time on the front end for them to get organized. So it is giving us less than 6 months to do what we need to do.

Mr. REICHERT. When it comes to the hearing, and I am from Washington State, and I think our wait time is about a year and a half, 507-plus days or so. One of my constituents who is a Social Security lawyer from my district who helps people navigate through the disability claims process said that there is kind of a perception that there is a bias against deciding claims favorably at the early stages of the process. His view is that a majority of the claims will be denied at the early stages, and then the ALJ will later give a favorable decision. He says, there is a sense in the community that this is purposeful because it prolongs the system, and it encourages people to drop out, and it saves money have. Have you heard this before?

Mr. ASTRUE. Oh, yes. This was a charge made in a CBS evening news piece a couple years ago. Interestingly, the woman that coined the phrase "culture of denial" in that interview cor-

nered me last weekend in a meeting to commend us on how much better we were doing in the Atlanta area where she works.

But I understand what it looks like on the other side. You know, you have a lot of people who, even if they don't qualify, are very sympathetic people, and the system is slow, and people get frustrated. A lot of times it gets very toxic in terms of how they feel toward the agency. So I understand that on a human level, but if anything, I think if you talk to the people in the DDSs there is a presumption toward allowance, not the other way, in these cases.

Mr. REICHERT. Do you keep track of the dropout rate? Do you know—

Mr. ASTRUE. I am not sure what you mean by the dropout rate.

Mr. REICHERT. If there are people who are actually just giving up, falling out of the system, and saying, I just can't go through this any longer.

Mr. ASTRUE. Yes, we do.

Mr. REICHERT. Do you know what that rate is?

Mr. ASTRUE. It depends on the period of time, and it changes very rapidly; so why don't we supply you with some information for the record—

Mr. REICHERT. Please. And then do you attempt to extend a hand to these people who are dropping out, to search them out and bring them back into the fold? You don't have time to do that probably—

Mr. ASTRUE. No, we don't do that. What we are trying to do is look at some places the people who don't qualify can go to get help. We can't have that conversation efficiently one by one, but we are looking through our notices and electronically to see whether we can provide more information to help people in those situations.

Mr. REICHERT. Mr. Chairman, I yield back.

Chairman TANNER. Thank you.

Mr. Higgins, we are glad to have you here.

Mr. HIGGINS. Thank you, Mr. Chairman.

Commissioner, can you help us, you have touched on it a little bit, but for the sake of context, just kind of walk us through, generally and briefly, the process of making an application for Social Security disability and what follows that?

Mr. ASTRUE. Sure. There has been an uptick recently. About 22 percent of the people now file online as opposed to about 5 percent a few years ago, and we have not improved that form yet. We have an improvement that is coming. It is a few months away. We also want to have a Title XVI application form. Now if you are filing for Title XVI, you have to actually come to the office and go there through the process.

Typically, though, people still come into the office. They have an interview. Intake is done in a field office, and then that information is transmitted to the State DDS. We have about 15,000 employees who are State employees but work full time for us deciding these cases.

And most of those States have two levels of review: an initial decision and what we call reconsideration. There are parts of about 10 States, some States in total, some States in part, that from an initiative of 10 years ago, don't have reconsideration, called prototype States. So sometimes there is recon, sometimes there is not.

When a State has made a final decision, it goes up for a full hearing before an administrative law judge. We get about 650,000 of those a year. We get about 3 million disability applications.

And then there is a relatively small number of cases that are appealed to an agency appellate board, and then they go up to the Federal court from there.

Mr. HIGGINS. It sounds very bureaucratic. Is it necessary? Could the process be streamlined?

Mr. ASTRUE. Well, it is a bit of a Holy Grail in the agency. And one of the problems with a lot of the efforts to make it better is that the law of unintended consequences kicks in, and it has made it worse. So we are constantly looking at efforts to streamline.

Some of the most dramatic streamlining probably would have to come from this room. Right now, I try to work within consensus and try to make the system within the consensus work as compassionately and quickly as possible. A lot of the things that you would need to do in order to cut out a lot of that would require legislative change.

Mr. HIGGINS. You indicated you went from 5 to 22 percent for those applying online?

Mr. ASTRUE. For disability, that is right.

Mr. HIGGINS. Ideally what is the goal there relative to online?

Mr. ASTRUE. There is no goal. My feeling is it is a choice for individuals, and that we should provide the best service in the office and the best service we can online. We are not where we want to be online with the disability yet, but we will be fully at some point next year.

Mr. HIGGINS. Assuming you were fully funded, what would be the likely time from one's making an application to a final disposition on said application?

Mr. ASTRUE. Well, I think that the biggest opportunity for collapsing the time up front for the biggest number of people is exactly what Congresswoman Schwartz mentioned. An enormous amount of time, effort, and money is spent chasing down scattered amounts of medical records on paper in lots of different locations, a lot of the time the claimant doesn't know where the medical records are, and our people do fairly heroic work trying to chase those down for the claimants. If we can eliminate that and go to a centralized single record for most Americans it would be huge.

We have been cutting down the time in the DDSes, but ballpark a little under 100 days first go round; probably a little under 100 days for recon. We might be able to cut that by two-thirds if we can really integrate with electronic medical records in the way we think we can in the next 2 or 3 years.

Mr. HIGGINS. And the shame is, I mean, this is obviously, this is a systemic problem, but it hits probably the most vulnerable population of folks. And we have a situation in Buffalo that is unacceptable on its face, and while some good progress has been made, it is only within the context of a horrible situation that we started with. Progress is being made, which I think is good, but obviously, this is not a problem unique to Buffalo but obviously hits a place like Buffalo particularly hard as well.

Mr. ASTRUE. The other thing that is important, I think the agency historically had a fairly high threshold for defining in its

rules whether someone was disabled or not. We had to see a lot of cases of that, and my view is that that is wrong, that cumulatively there are an awful lot of cases that we weren't giving guidance on, and that is where an awful lot of the error and an awful lot of the delay was.

So we are not just making the medical listings more current; we are trying to drive them down into a lot more rare diseases and conditions. We know a lot of those are automatically disabling. We are trying, with electronic screening to just pick those out and allow those. And as I said in my testimony, we are about at 4 percent now. We have gone from 2.7 to 4 percent in the last year. We were at zero the year before. We think we can get 6 to 9 percent of the cases decided in that way. Right now, it is an average of about 10 days. We are hoping we can do that a little quicker. We have got some old rules that are process rules that we are looking at getting rid of, and so we might even be able to take that 10 days and make it 5 days, and if we can do that, we will.

Mr. HIGGINS. Thank you, Commissioner.

I yield back.

Chairman TANNER. Mr. Lewis, you are recognized.

Mr. LEWIS. Thank you very much, Mr. Chairman. And, Mr. Chairman, I want to thank you for holding this hearing today.

Mr. Commissioner, how long have you been commissioner?

Mr. ASTRUE. A little over 2 years.

Mr. LEWIS. Over 2 years.

Mr. Commissioner, as you know, I represent metro Atlanta. The Atlanta and Atlanta North hearing offices have some of the worst backlogs in the Nation. Although there has been some improvement, not much since the last time that you were here.

Mr. ASTRUE. Actually, Mr. Lewis, I think I would disagree with you. When I had my first hearing here just over 2 years ago, Atlanta and Atlanta North were the two worst in the entire country. Atlanta was at 900 days, and Atlanta North was a little bit south of that. Today we have cut almost a full year, in 2 years, off the Atlanta times, and we are at about 667, if I remember correctly, for Atlanta North.

I agree with you that that is not acceptable, but we have a new office coming that we are calling Atlanta South, and it is centered in the Covington area. When that office opens, we ought to have all the offices in the Atlanta area, I would think, better than the national average. So we are making a lot of effort in Atlanta, a big effort with the National Hearing Center. We put four electronic hearing rooms into the Marietta field office to try to accommodate that. We have put an extraordinary effort into trying to improve what was 2 years ago the worst situation in the country, and it is not now.

Mr. LEWIS. Mr. Commissioner, in Atlanta, I believe people are waiting 561 days. In Atlanta North, they wait 668 days for a hearing. People shouldn't be waiting that long.

Mr. ASTRUE. I agree with that, but it is significantly better than 2 years ago and—

Mr. LEWIS. I am not going to argue with you. It is better. But it is not much better. Waiting that long is too long.

What has been done in Atlanta to address the issue? I am frustrated. I keep hearing talk about the union, GAO, OMB. Have you asked for more money during the past 2 years, more resources?

Mr. ASTRUE. Absolutely.

Mr. LEWIS. Do you get it?

Mr. ASTRUE. Not very promptly. I mean, you have to remember, for the first 6 months of this year, we have been on a continuing resolution. Last year we got \$148 million over the President's budget. I went back to OMB to ask for authority. That budget was not mine; that was Commissioner Barnhart's budget. But to argue for \$100 million over the President's budget, it is very unusual to get that permission, and we got it.

So I have been fighting for this agency's resources, and we have been trying to put them where they should have been for decades. And Atlanta has always been number one on my list. And, you know, in the first group of new hearing offices we approved was Atlanta South to take the pressure off of the Atlanta downtown and Atlanta North offices.

So it is going to take time for the permanent solution. But in the meantime, we are using Office of Quality people to prep cases. We have had the National Hearing Center, the first test of the National Hearing Center with Atlanta downtown cases. We have put in an extraordinary effort in the short run to bringing those horrendous numbers down. We have made progress. I agree with you; it is not good enough. But there is more coming, and we are doing the best we can as fast as we can.

Mr. LEWIS. As you take a long hard look, what are you doing about planning for the future in terms of resources, dollars, people, space?

Mr. ASTRUE. We try to have, I think, a much more disciplined strategic planning process than we have had before. I think, in the past, the agency's strategic plan, which was required by OMB, was not much more than a revision of the budget document. We didn't do that. We went through a very serious process to say, what are our long-term needs? What are we not looking at that we need to plan for? And there are a number of things that we are doing now over the long run that are only going to make my life harder in the short run because I am not going to be here to get the benefit: replacement of the National Computer Center, and replacement of the Dictionary of Occupational Titles, which the Department of Labor stopped updating in 1991.

So we are tackling a number of things where the agency had not been focused on what we needed to do over the long run to deliver service to the American people, and we have tried to identify those through our planning process and suck it up to make the investment even though there is a lot of pressure to put money in a lot of other places in the agency right now. We are trying not to forfeit the long-run future of the agency.

Mr. LEWIS. Is there anything that can be done to make the decision in the front end rather than at the back end?

Mr. ASTRUE. Yes. We are doing that as best we can. And, again, we have new systems in place to try to define those cases that ought to be automatic up front. That has gone from a small pilot with a handful of cases in 2 years to, now, 4 percent of the country

is benefiting from that, and our goal is to get that from 6 to 9 percent in the next few years. So that is a matter of updating and being much more specific and much more detailed about the medical listings, and we have been doing that, and we have been doing that extremely quickly. So that is one example of what we are trying to do.

We also have some new computer systems in place that are promising in terms of queuing and reminding examiners on the front end what they need to do and what they need to document to lift the quality of the cases. Not quite ready for prime time, and we have a problem right now in that we have 54 separate IT systems for the States. And it means, every time we have something that can improve processing, it is long, slow and expensive to roll it out. So what we are trying to do, and we have got the States behind us now—this failed once before 10 years ago—is to develop a common IT system to get away from the COBOL, to get away from the legacy systems, and to get to a Web-based system for all the States that, when we have things that will improve things for claimants, we can roll it out very quickly.

Right now, I can't. The money and the technology won't let me do it. So that is why it is really important that for these IT improvements, we get as much support as possible and the States stay behind this. Otherwise, the improvements that the smart technical people can make aren't going to get out there very quickly to help people, and that is what I want to do.

Mr. LEWIS. Thank you, Commissioner.

Thank you Mr. Chairman.

Chairman TANNER. Thank you.

Mr. Meek, then Mr. Davis, and Mr. Becerra.

Mr. MEEK. Thank you, Mr. Chairman. And I am glad we have the witness back once again.

I was here 2 years ago when you testified before us. And as you know, I am from Florida, and actually, your office is right across the parking lot from my office, so I do get a firsthand dose of individuals that are very concerned with the lack of movement.

I was handed a national ranking report here, average processing time, and I am looking at this, and I can't help but notice, and I will start with Orlando, it says, in region 4, we have 476 days to process, and I would even go beyond that, because if you look at it from days, you really can't get a full appreciation for the time that people have to wait. So that is 111 days over a calendar year. You look at Jacksonville, region 4 again, it is 492 days. That is 120 days over a 12-month calendar year. You look at Tampa, 532, which is 167 days over a calendar year. And the offices right across the street from mine, right across the parking lot from my office, has 674 calendar days, which is almost 2 years, just short of 2 years, 309 days over a 365-day calendar year.

When you are dealing with individuals, and as you all know and everyone over at the department knows, you are dealing with folks that 9 times out of 10 are dealing with the muddiness of life, and they are trying to make a claim, and guess what? A super majority of those individuals that come to my office end up winning their appeal. And I can't help but think that this has to be a major concern of yours and the department.

Now, I know you are here asking us to do things, and I believe we have and we will continue to do things as we make life better for the agency. But I can tell you it is just truly hard for Members, for them to repeat what you have already said, that we understand, we understand we have a problem; we understand, we are trying to work through it, but there has to be a way that we can look at these appeals at a faster rate, especially now in this bad economy.

So I wanted to ask you, as it relates to our financial situation, our present footprint right now in this economy and the individuals that are filing that are being denied, that are being placed in the appeal process, has there been any change whatsoever, any consideration taken by Social Security as it relates to these claims that have been made of understanding the financial strain that these applicants are under right now?

Mr. ASTRUE. We do understand the strain that people are under, and that is why we have more and more mechanisms for the people who are truly entitled to try to identify them on the front end and pay them their benefits as close to immediately as possible. It is still a very difficult statutory standard. There are a lot of very sympathetic people who don't qualify for benefits, and that is your choice. It is a very expensive one. What we try to do is implement the statute as fair and square as possible. It has been difficult with the resource levels.

Now, Florida is one of the States, as with Georgia, Michigan, and Ohio, that has been systematically under-resourced over the years, and we are moving to address that. So in the first round of new hearing offices there was Tallahassee, and in the second round we sent to GSA was the Tampa-St. Petersburg area. So there is help coming, approximately 15 additional administrative law judges for the State of Florida.

I think it is a credit to the people in this agency that, with this economy, they are still making service improvements and that we haven't had a significant deterioration in service—we have been making small progress. And that has also been in a time of very tight dollars. Until 2 weeks ago, I was well into my 3rd year as a Commissioner with one appropriations bill. I have spent the majority of my time managing this agency under a continuing resolution and that forces hiring freezes. That chokes off the very people who can help the people that you want to help.

Now, again, I am not criticizing this Committee. This Committee and the Finance Committee have been extraordinarily useful in making the case to your colleagues, but I think a lot of your colleagues in the Congress still don't understand what they have been doing to this agency, and we need you and the others on this Committee to continue to be our advocates. We can't do it without your help. If we are back on continuing resolutions, you are just going to see the quality of the service go down.

Mr. MEEK. Thank you, Mr. Chairman.

I just wanted to make sure that the witness was able to share with us what we may need to know, maybe not necessarily what we all want to hear. But I think, at the same time, we are properly motivated; I know I am, because many of our cases outside of immigration cases in Florida that come from my district offices are

dealing with the very claims that we are talking about here today, and I just wanted to make sure that there was maybe more license to be extra sensitive in these very hard times.

Thank you, Mr. Chairman.

Chairman TANNER. Thank you, Mr. Meek.

Mr. Davis, I am pleased to recognize you, sir.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman.

And let me just agree, Commissioner, that continuing resolutions do hamper movement into projected budget activity for the coming year or even the year that we might be in.

When I look back, though, it seems to me that decreased funding back during what I would call the Bush Senate kind of started us to escalate in relationship to a backlog. I was also thinking that we have had a lot of conversation in relationship to increased applications due to the recession. Let me ask, what specifics do you plan to put in place or do you have in place to make use of the stimulus money that is going to come to the agency? And how do you view that helping to reduce the backlog?

Mr. ASTRUE. So here is the good news and the bad news. We need more people. As of a couple weeks ago, we had the money to do it. We are working as hard as we can to go out and try to hire about 5,000 people before the end of the fiscal year, and we will probably fall a little bit short. That is huge for us. We have had to move people around just to put the infrastructure back in to hire at that level. So we are trying to do that. We are also assuming, and you know I may hang on to regret this, that Congress will accept that we need more of this infrastructure in the baseline in the hearings office. And if we end up being told we have overbuilt and we are back, you know, on level funding again, then there will be consequences for having built up that infrastructure. But we have decided to take the leap of faith that Congress is sufficiently concerned about the backlog, that when you say we need 15 percent more capacity than we had a couple years ago, that Congress will continue to support that, and that is pretty critical for us.

Mr. DAVIS OF ILLINOIS. I couldn't help but perk up a little bit when I heard my friend from Atlanta, Mr. Lewis, indicate that he was frustrated. And I said to myself, if he is frustrated, then I must be devastated because when I look at the Chicago experience and I look at the fact that we have actually gotten worse by 95 additional days, then when I hear that there are plans to open some new offices in the Midwest region or in the Chicago land area, but those offices are not scheduled for Chicago. As a matter of fact, they are scheduled for other locations, and it is my understanding that the decision is based upon under-allocations or the fact that they may have not been adequately staffed earlier. But it seems to me that if we have gotten 95 days worse in terms of a waiting period in Chicago, something must already exist or something must be going on that caused this discrepancy.

Mr. ASTRUE. Sir, the way we are doing this is the way that, if we could all get in a room, we would agree is the right way to do it. We are trying to work down from the places where the wait is the worst and come down. So we still have a placeholder for two more, possibly three more hearing offices. The staff came up with the four recommendations. I took a quick look at that, and I looked

at the national numbers, and I am concerned. This next round, the Chicago area is one of the ones that we need to have a discussion about. There is a placeholder for discussion. The straw man right now is for Gary, Indiana, because ODAR doesn't respect State lines. Chicago is supporting Indiana across the state line, and we are trying to have a conversation about, if we do do it in the Chicago area, what makes the most sense? How does that line up against the other four?

So I can't tell you that we have made the decision to do that, but I don't disagree with you that you are in the next tier of offices where we need to think about additional support, and we may make that decision within the next few weeks. So we are close, but we are not there yet.

Mr. DAVIS OF ILLINOIS. Well, let me thank you very much.

And let me thank you, Mr. Chairman.

And let me say, I certainly empathize with Gary a great deal, but I always, my mother, who told us that charity begins at home and spreads abroad, so I have got to be concerned about Chicago. Thank you very much.

Mr. ASTRUE. Thank you.

Chairman TANNER. Mr. Becerra.

Mr. BECERRA. Mr. Chairman, thank you for holding this hearing.

Commissioner, thanks for being with us again. Let me just repeat a few things. One million three hundred Americans waiting for a decision on their application for disability benefits; taxpayers, seniors, people who have contributed to the system that makes it possible for you and I to be here to talk about a disability system for Americans who have worked and now have become disabled. One million three hundred thousand of them waiting for a decision on whether they can finally receive benefits for which they paid when they were working. Total wait time on an appeal of a decision, as long as 2 to 4 years. Since 2000, the number of people waiting for a hearing on their disability claim has more than doubled from 310,000 to more than 765,000, as of February 2009.

For far too many years, Commissioner, this government had disrespected taxpaying Americans, American seniors, who have earned the right to have a disability claim adjudicated. And I am not here to blame you or anyone within Social Security. What I am here to say is this: We can't do this anymore. You cannot come and testify and not ring the bells if you are not getting the resources you need. We are now trying to play catchup. We have a new President, a new Congress, and we are now trying to play catchup after years of underfunding the work you need to do to give Americans who pay taxes their right to a decision, yea or nay, on whether they qualify for disability benefits which they helped make possible through their taxpayer dollars.

You need to speak up. You can't allow the administration, and I know you are constrained because the White House in years prior, the Office of Management and Budget, which handles the budget that the President submits, in years prior has made it difficult for you to speak. I hope with this new administration it will be different and you will be able to speak a lot louder because you

can't catch up in 1 year for years of neglect of this agency for services people are entitled to. You need to speak up.

Secondly, never again should we allow a White House and the administration or any Congress to tell seniors they have got to wait 2 to 4 years to have a disability claim adjudicated. Last year, actually 2 years ago, we finally got you more money than the President had requested in his budget for the Social Security Administration, but that was after several years of the President's not even seeking the money that you needed and you had told him you needed. So it is ridiculous for us to believe that this new President with a new Congress can undo years of neglect, but we have got to start.

So when we come to you and say, by the way, you are going to do disability claims, you are going to adjudicate those, and on top of that, we are going to ask you to also administer the Medicare prescription drug program, we need to give you personnel because you can't ask someone to be doing adjudication and then be pulled off of that to go do Medicare prescription drug management of a program. When we say to you, you need to verify the work status of all people who want to work in this country to make sure that they are entitled to be in this country and work and to go through the E-Verify system and ask you to handle some of that load, you have got to then say, well, then you have got to give me some personnel and resources because, otherwise, I am pulling people away from disability claims for Americans who are waiting to hear whether they are going to get their assistance or not to do the work of verifying individual status to work in this country, which we must do. But you have got to shout and say, don't expect me to do all these things without getting the money.

I think it is unfortunate that we have underfunded you \$1.3 billion for close to the last 10 years. It wasn't until, as I said, 2007 that you got, in fiscal year 2008, \$150 million extra, but your staffing levels by the end of 2007 had dropped to levels not seen since 1972. And in that time since 1972, the population you are dealing with has more than doubled. So we have got to do something. You have got to be forceful.

When we ask you a question, do you need resources, you have got to give us a straight answer. And I know you are limited, but this is just not right. You have got people who are disabled, who are waiting to hear on their claim, and it is frustrating because it is not your fault. It is not the good people who work for the Social Security Administration's fault. It is the fault of this Congress and the fault of previous administrations for not giving you the resources you needed. We shouldn't shortchange people because politically here in D.C. the tough decisions are not made.

I have consumed all of my time, Mr. Chairman. I apologize. I don't know if the commissioner wanted to respond to anything.

But it is just very frustrating because you can't just nod your head one way or the other if we ask you, do you need resources, and you know you are crying for more and you say we think we can make due or we are going to try to do the best we can with what you give us. That is not good enough.

Mr. ASTRUE. If I can just try to take a minute, Mr. Chairman, to respond to that.

So I understand that you are trying to help me here. My view is I have spoken up loud and hard for this agency. I don't grandstand because——

Mr. BECERRA. Have you told us how much you need for this year? How much you need, not what you requested.

Mr. ASTRUE. You are talking about fiscal year 2010?

Mr. BECERRA. Yes.

Mr. ASTRUE. Fiscal year 2010, my request, it gets complicated. I made two requests. We did one in September, and I wanted to go in September so it would be bipartisan so no one would say, it is an Obama budget or it is a McCain budget. The world changed between September and January. I redid the budget. I asked for substantially more money on the basis of the economic conditions and submitted it a second time. We have even informally tweaked it up a little bit since then.

And you are right, I am constrained. I will say that we are very much in sync with this administration in what we think needs to be done in this agency. This is a 10-percent increase in terms of what the President has recommended. And I remind you that, when I got here, we had 15 straight years where the Congress was under the President's budget. When I started here, there was a furlough warning. There was a continuing resolution the whole year, and I spent an enormous amount of time groveling to get money from the pool for the emergency release so I wouldn't have to furlough my people.

That is the baseline where I started; 2008 had already been submitted. I went back and got informal permission to go for \$100 million more, and we ended up with \$148 million more, and there was no veto threat on that. And I try not to grandstand and take credit. And a lot of people deserve credit for improving the situation in the agency. In fiscal year 2009, we got a 6.5-percent increase at a time when the domestic agencies were almost all at zero or cut. So we got a significant increase last year, and this year, we are in sync at a 10-percent increase with this administration. So, you know, I may not get up and yell at public events about the—I don't think——

Mr. BECERRA. What about privately then——

Mr. ASTRUE. Well, I have been known to have a temper occasionally.

Mr. BECERRA. Just defend your people and your mission. We want to be there for you.

Mr. ASTRUE. And I agree with you, and I believe that I have tried to do that. And at some point, the question of your effort and your competency is the outcome, and I think we have had good outcomes the last 2 years. These are the 2 years that I have had to influence the budget.

Mr. BECERRA. Thank you very much.

Thank you, Mr. Chairman.

Chairman TANNER. Mr. Commissioner, I am going to thank you for your time and your testimony, and I hope you will be receptive if any of the Members have a written follow-up.

Mr. ASTRUE. Absolutely. Thank you, Mr. Chairman.

Chairman TANNER. Commissioner, thank you.

We have about an hour left in this room, so I appreciate the panel's being so patient with us. If they would, please.

We have the Honorable Patrick O'Carroll, who is the Inspector General of the Social Security Administration. We have Mr. Dan Bertoni, the Director of Disability Issues, government Accountability Office; Ms. Peggy Hathaway on behalf of Consortium for Citizens with Disabilities Social Security Task Force. We have the Honorable Ron Bernoski, the Association of Administrative Law Judges from Milwaukee; Mr. James Fell, Federal Managers Association Chapter 275; and Mr. Rick Warsinskey, the National Council of Social Security Management Associations, Incorporated, from Cleveland.

What the Chair chooses to do is call on the panel in the order in which I have introduced them for their statements. All of you will have any statement you wish to submit for the record included in its entirety without objection.

[12:36 p.m.]

Chairman TANNER. If you could hold your comments to 5 minutes, the panel would very much appreciate that.

So, with that, Mr. Johnson, do you have an opening statement?

With that, Mr. O'Carroll, welcome and thank you for being here. You are recognized.

**STATEMENT OF THE HONORABLE PATRICK O'CARROLL, JR.,
INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION.**

Mr. O'CARROLL. Good morning, Chairman Tanner.

Good morning, Mr. Johnson.

Let me first thank you for this invitation to testify today. It is a pleasure to be here in front of both Subcommittees. With so many new members, I want to take just a moment to introduce SSA's Office of the Inspector General. We are 600 auditors, investigators, attorneys and other professionals. Our mission is to prevent and detect fraud, waste, and abuse.

In February, Chairman Tanner was gracious enough to meet with me to discuss issues of mutual concern.

Mr. Chairman, you mentioned a constituent who contacted you wanting an assurance that disability benefits are paid only to those entitled to them and that the stimulus funds provided to SSA are spent well and wisely. My testimony today is directed at that constituent and at the millions of others just like her.

I would also like to thank Congressman Brady. Last week, Mr. Brady was kind enough to visit one of our offices that best illustrates the partnership we have forged with SSA and with State and local agencies to combat fraud.

Our Houston Cooperative Disability Investigative Unit, or CDI, is one of 20 such units around the country that we formed in partnership with SSA more than a decade ago. CDI Units detect fraud at the initial application stage before any benefits are paid. With a return of \$14 for every dollar invested, CDI units make sound fiscal sense. I thank Mr. Brady for his interest and his visit, and extend to all of you the same invitation to visit any of our CDI units. We will show you firsthand why there should be more.

Both fraud and improper payments in the Title II and Title XVI disability programs are the focus of many of our efforts. Before I

address the backlog, I would like to briefly mention some of our work in this area. Recent and ongoing audits looking at improper payments resulting from unreported wages and assets, unreported changes in living arrangements, and recipients residing outside of the United States are representative of our integrity work in the SSI area. And audits like the current one, reexamining how well SSA reacts when earnings are reported on a disability beneficiary's account, are representative of our integrity work in the Title II program.

Since our inception in 1995, we have worked to ensure that SSA strikes an appropriate balance between its world-class service and stewardship. For this reason, our work is not only integrity-based, but conducted with the full awareness that service is just as important.

The disability backlog, about which I testified twice last year, is currently the IG's highest priority, just as it is SSA's. We recently published an audit examining the entire disability process from the claimant's perspective and found that, while decisions on initial claims are made within 131 days and decisions made on reconsiderations take 279 days, requesting a hearing before an ALJ means, on average, a wait of over 800 days. These numbers make it clear that much more needs to be done.

As a result, we are conducting multiple audits aimed at providing SSA and Congress with information and recommendations to reduce the disability backlog. For example, at a hearing last year, a Subcommittee Member raised valid concerns about the effect of these long waits on disabled claimants. We are now conducting an audit in which we are interviewing 550 disability applicants to learn about their experiences. Another current audit is examining the effects of States' decisions to furlough DDS employees. Five States have already implemented such furloughs, creating further delays in the disability determination process.

In other ongoing audits, we are looking at optimum staffing ratios and skill sets in hearing offices; SSA's e-Pulling pilot; reasons why four particular types of disabilities create a disproportionate number of ALJ reversals; and the effectiveness of video hearings on productivity.

Also, the American Recovery and Reinvestment Act provided SSA with \$500 million to process disability and retirement workloads. As soon as SSA presents its plan for its use of these funds, my office will begin a series of audits to assess that plan.

Mr. Chairman, you can tell your constituent we will be very thorough. I thank you again for this invitation to testify today, and I will be happy to answer any of your questions.

[The prepared statement of Mr. O'Carroll follows:]

**Statement of The Honorable Patrick O'Carroll, Inspector General,
Social Security Administration**

Good Morning, Chairman Tanner, Chairman McDermott, Congressman Johnson, and Congressman Linder. Let me first thank you for your invitation to testify today. Your committees are staunch supporters of the work of the Office of the Inspector General, and I look forward to working with all of you on the many critical issues of great concern to us all.

Of the 27 members of the two subcommittees, I am testifying before 20 of you for the first time. While I won't take up much time with background information, I do want to take the opportunity to introduce the Social Security Administration's (SSA)

Office of the Inspector General, or OIG, to those of you new to these committees. In business since SSA became an independent agency in 1995, the OIG is currently a team of 600 auditors, investigators, attorneys, and other professionals dedicated to our statutory mission—preventing and detecting fraud, waste, and abuse in SSA's programs and operations. Over the years, our audits and investigations have uncovered billions of dollars in fraud, improper payments, and Federal funds that can be put to better use. I'm extraordinarily proud to head an organization that works so tirelessly to protect the integrity of these government programs that touch the lives of nearly every American.

In February, Chairman Tanner was gracious enough to meet with me and discuss issues of mutual concern. During that meeting, Mr. Chairman, you mentioned a constituent who had contacted you, wanting an assurance that disability benefits are paid only to those entitled to them, and that the stimulus funds put to that use are spent well and wisely. My testimony today is directed at that constituent, Mr. Chairman, and at millions more like her.

While I'm always pleased to testify before the Social Security Subcommittee, I'm particularly pleased to be here before the Subcommittee on Income Security and Family Support as well. The Title XVI Supplemental Security Income program has been off the Government Accountability Office's high-risk list for years now, but this has not slowed the OIG's work on SSI issues. In addition to the audits related to the disability backlog that I will discuss today—most of which are equally applicable to Title II and Title XVI disability applicants—we have conducted several recent audits focused on the integrity of the SSI program.

Last week, Congressman Brady was kind enough to visit one of the offices that best illustrates the partnership we have forged with SSA to combat fraud. Our Houston Cooperative Disability Investigation unit, or CDI, is one of 20 such units around the country that we formed in partnership with SSA more than a decade ago. Each is composed of an OIG Special Agent who acts as team leader, employees from SSA and that State's Disability Determination Service (DDS) who act as programmatic experts, and State or local law enforcement officers. Tapping the skills of each member, the CDI units receive benefit applications flagged as suspicious by the DDS and, where appropriate, investigate.

Designed to detect fraud before benefits are ever paid, the CDI units have been an overwhelming success. Several years ago, the Government Accountability Office recommended expansion of the CDI program to all 50 states, and I share their enthusiasm. With a return of \$14 for every dollar invested, CDI units make sound fiscal sense. I want to thank Mr. Brady for his interest and his visit, and extend to all of you the same invitation to visit any one of our 20 CDI units.

The issue we're discussing today, however, is primarily one of service to the American public. Service is SSA's hallmark, and for fourteen years, we have urged SSA to strike an appropriate balance between that service and the stewardship incumbent upon a program that pays out over half a trillion dollars a year. Over that time, the OIG has always been there to help correct the Agency's path when its focus on service has threatened to overtake its commitment to stewardship. While the disability backlog is first and foremost a service issue, it also carries important integrity issues over which my office keeps a careful watch.

Therefore, I will address both service and integrity aspects of the backlog in my testimony today. I'll be discussing the work that the OIG has completed, and the work we have underway, that is designed to provide information and recommendations to the Agency and to Congress with respect to improving the entire disability adjudication process. To do so, I'll speak first to the overall processing time for disability claims, then to factors related specifically to the hearing process, and finally, to a number of related audits in which the focus is on integrity, rather than service alone.

OIG Reviews Involving the Overall Processing Time for Disability Claims

Our December 2008 report, *Disability Claims Overall Processing Times*, examined for the first time not merely the appeals process—where most of the backlog exists—but the entire process of adjudicating a disability claim. Looking at the process from soup to nuts, we sought to determine SSA's average overall processing time for disability claims decided at the initial DDS level, upon reconsideration at the DDS, by an Administrative Law Judge, by the Appeals Council, or by a Federal Court—all of the stops at which a claim can be decided. This, we felt, would give a true claimant's-eye view of the entire process from when the claimant filed an application until SSA issued benefits or the claimant stopped appealing.

We found that the average claim adjudicated in 2006, when decided initially by a DDS, was concluded in 131 days, but that if a claim was adjudicated upon a request for reconsideration, that time more than doubled, to 279 days. If a claim was

appealed to an ALJ, the 279-day wait almost tripled, to 811 days, or 2.2 years. A trip to the Appeals Council (the last step under SSA's control) increased the total time to 1,053 days, while a Federal Court appeal stretched the wait to just under five years: 1,720 days.

We recommended that SSA publish this measure to show disability waiting time from the claimant's perspective, to better inform Congress and the public.

We also have two audits underway that address overall claims processing time. The first, *Impact of the Claims Process on Disability Applicants*, stems from an issue raised by the Social Security Subcommittee during my testimony at a September 2008 hearing. The Subcommittee was concerned about the effect of the arduous disability adjudication process on already-disabled claimants. I share those concerns, and to address them, we are conducting a review in the course of which we will interview 550 randomly-selected disability beneficiaries. Of the 550, 250 had claims adjudicated at the DDS, either at the initial or reconsideration stage, another 250 were adjudicated by ALJs, and the remaining 50 were decided by the Appeals Council or a Federal Court. Our interviews are designed to elicit from these individuals information about their experiences in obtaining benefits and the effect those experiences had on them. We anticipate publication of this report in August of this year.

Our second ongoing project in this area is a Quick Response Evaluation entitled *Impact of State Employee Furloughs on SSA's Disability Programs*. As you are aware, several States have implemented furloughs of their employees. In some of these states, the furloughs include employees of the State's DDS. The Commissioner sent a letter to each of the relevant Governors, reminding them that SSA, not the States, pays 100 percent of the costs of processing these disability workloads. In addition, SSA's Regional Commissioners urged their States to exempt DDSs from hiring restrictions and furloughs. Nevertheless, our preliminary findings indicate that of the 52 DDSs, five were experiencing furloughs, three were still under furlough consideration, and 44 either were not furloughing employees, or the DDSs had been exempted. Unfortunately, the five States that decided to furlough their DDS employees—California, Maryland, Massachusetts, Oregon, and Connecticut—comprise 15 percent of the national DDS workload each year.

The impact of these furloughs on beneficiaries is apparent in our report, which will be issued shortly. For example, we found that California will encounter a shortfall of capacity of 10 percent due to furloughs. We estimate that this will delay over 2,300 applications from being processed, of which we estimate 776 would result in allowances. Those 776 beneficiaries will be forced to wait to receive their \$648,000 in monthly benefits as a direct result of the furloughs.

Since January 1, 2009, California's initial claims pending have increased by 9.7 percent and its reconsideration claims pending by 16.1 percent as a result of increased applications and the State furloughs.

OIG Reviews Related to the Hearings and Appeals Process

While issues surrounding the DDSs and the processing of both initial claims and requests for reconsideration are material to the overall backlog, the findings in our soup-to-nuts review establish that the real delays begin when an appeal is filed—it was at this stage that the processing time jumped from 279 to 811 days. As a result, the majority of our work related to the disability process focuses on this stage of the claim.

In recent years, we have conducted a number of reviews in this area, studying ALJ productivity, hearing office performance, timeliness of medical evidence, and other factors. Our past work in this area can be viewed online at http://www.ssa.gov/oig/office_of_audit/issuesmanage.htm, or I'd be happy to provide any of the Members with hard copies of any report.

Today, however, I'd like to look ahead by sharing some information about the work we have in progress in these areas, in addition to the aforementioned audit on the impact of the process on disabled beneficiaries, which bridges the initial adjudication and the appeals processes.

Electronic File Assembly, often referred to as e-Pulling, is a pilot initiated by SSA and designed to improve the process by which disability claim files are assembled and prepared for an ALJ hearing. Customized software, piloted at seven locations in the summer of 2008, is being evaluated by SSA to determine when e-Pulling should be implemented nationwide. The OIG is assessing the results of the pilot, as well as whether SSA's assessment procedures are effective with regard to making decisions about a nationwide rollout.

In another review, we are studying the age of pending claims caught in the disability backlog and identifying obstacles that have prevented the oldest claims from moving forward. Our review, which includes hearing offices with the most aged

cases and those with the fewest, is designed to identify best practices and make recommendations for reducing the number of aged cases.

Hearing office performance and staffing is an issue we touched upon in our 2008 audit, *ALJ and Hearing Office Performance*. In that audit, we found that staff ratios and staff performance were significant issues in determining a hearing office's processing time. In an audit now underway, we are delving deeper into these specific issues. Our goal, to be accomplished through extensive field work in hearing offices across the country, is to identify optimum staffing ratios and staff skill sets to maximize hearing office performance.

In an earlier analysis of DDS determinations, we determined that there were four impairments that, when denied by the DDS, were most likely to be reversed by an ALJ: disorders of the back, osteoarthritis and allied disorders, diabetes mellitus, and disorders of muscle, ligament, and fascia. A review now underway will, within the context of these four impairments, analyze multiple variables to include claimant age, the State in which the claimant resides, the hearing office that heard the case, whether the claimant was represented, claim processing time, and other factors. Our goal is to provide SSA with information that will be useful in considering changes that will allow these cases at the initial level, instead of being consistently denied and reversed, using limited resources.

Video hearings are another initiative SSA has employed to reduce the disability backlog. By reducing ALJ travel to remote locations, SSA's intention was to increase ALJ productivity. As of fiscal year 2008, SSA had procured and was installing 558 video teleconferencing units, and was planning to obtain and install another 112 units in fiscal year 2009. SSA is also installing smaller video units, called Desktop Video Units, which will not require a hearing room and will thereby expand the capacity of hearing offices. We have fieldwork underway on an audit designed to assess whether the use of these video units increases hearing office productivity and provides claimants with more timely service.

Finally, the *American Recovery and Reinvestment Act of 2009* provided \$500 million to SSA to process the additional disability and retirement workloads created by increased benefit applications brought about by the economic downturn. As stated in the Joint Explanatory Statement of the Committee of Conference accompanying the legislation, "These additional funds will allow SSA to process a growing workload of claims in a timely manner and to accelerate activities to reduce the backlog of disability claims." The OIG is charged with oversight of this and all SSA stimulus spending. In early April, as SSA provides the Office of Management and Budget with its plan for the use of these stimulus funds, our office will initiate an audit that will assess the Agency's spending plan.

All of these ongoing audit efforts are designed with a single goal in mind: to help SSA and Congress in their efforts to improve service to disability beneficiaries. As I stated at the outset, however, service is only one side of the equation, and while the disability backlog is first and foremost a service issue, I would be remiss if I didn't also mention our integrity-based efforts in the disability arena.

Integrity is at the very heart of the OIG's mission, and our efforts in this area take on myriad forms. From criminal investigations to complex audits, and from government-wide task forces to the CDI units I mentioned earlier, integrity is our bread and butter. The programs administered by SSA pay some half a trillion dollars a year to 50 million beneficiaries and recipients nationwide and around the world. That money comes from the Social Security Trust Fund, the solvency of which affects every American, and from the general fund of the U.S. Treasury—all of it representing taxpayer dollars. We take our role as protectors of those funds very seriously, and while our work aimed at service issues, such as reducing the disability backlog, is every bit as important, service cannot be administered without safeguards adequate to ensure integrity. Thus, our work with regard to SSA's disability programs is by no means focused solely on service.

Integrity-Based Work Related to Disability

Our work with respect to the integrity of the disability programs encompasses both improper payments and actual fraud. In both instances, the majority of these integrity issues are relevant with regard to both Title II and Title XVI disability, but the SSI program has unique characteristics stemming from its nature as a resource-based program that merit separate attention.

For example, last year, we conducted an audit designed to detect both improper payments and fraud due to the failure of SSI recipients to notify SSA that they had been married, an event that impacts both eligibility and payment amount under SSI. We estimated that about 2,000 recipients were overpaid about \$25 million, and that by stopping these incorrect payments, SSA could save about \$7 million over the following 12 months.

In another 2008 audit of the SSI program, we obtained bank data for a sample of SSI recipients to determine if it was cost-effective to use this type of information to identify SSI recipients who were no longer eligible by reason of being outside the United States. We analyzed the data to identify recipients with Automated Teller Machine withdrawals outside the country. Although we estimated a significant amount of overpayments—about \$226 million—the audit was labor-intensive, as the bank provided paper, rather than electronic, records. SSA does not intend to pursue the use of this type of data due to resource issues.

While these audits were SSI-based, we also conduct integrity work that by its nature is limited to Title II disability. In a review currently underway, we are following up on an earlier audit that examined SSA's treatment of Title II beneficiaries who had earnings reported to SSA, an event that is at least indicative that the individual may no longer be eligible for benefits. In 2004, we found that \$1.37 billion in overpayments resulted from SSA's failure to identify about 63,000 disabled beneficiaries whose work activity resulted in earnings being posted to the Master Earnings File between 1996 and 2000. In 2004, SSA implemented an automated system called eWork to assist in controlling and processing work-related Continuing Disability Reviews, or CDRs. Our current review revisits this issue, and assesses the success of SSA's efforts in this area over the past five years.

We found that while SSA has made efforts to reduce these overpayments, there remains cause for concern. Based upon the sample population we reviewed, we are estimating that approximately \$3 billion was overpaid to about 170,000 beneficiaries who had earnings reported between 2001 and 2006. While SSA identified \$1.8 billion and 141,000 of these beneficiaries, the remainder (\$1.2 billion to 45,000 beneficiaries) went undetected. We believe that 21,000 of these 45,000 beneficiaries are no longer eligible for benefits, and estimate that SSA will pay \$346 million to them over the next 12 months if corrective action is not taken. Our report is currently with SSA for review.

Finally, much of our integrity work covers both Title II and Title XVI disability. Like the Title II work-related CDRs, medical CDRs (Title II) and redeterminations (Title XVI) are a critical tool used by SSA to maintain the integrity of disability programs and processes. In recent years, resource limitations and other factors have resulted in fewer and fewer medical CDRs being conducted by the Agency. The *Contract with America Advancement Act of 1996* provided funding for CDRs from 1996 to 2002, during which time SSA eliminated its entire backlog of CDRs and redeterminations. Since that funding expired, however, medical CDRs have decreased over 60 percent—from more than 679,000 in 2003 to fewer than 250,000 in 2008. The backlog, as of the end of fiscal year 2008, was reported at 1.4 million CDRs, and SSA estimates that the backlog will reach 1.6 million by the end of this fiscal year. Redeterminations decreased more than 50 percent during the same period.

We have initiated audits to determine the financial impact to the Social Security Trust Fund and the General Treasury as a result of the decrease in the number of medical CDRs and redeterminations being conducted, as well as the amount of funding that would be needed to eliminate the current backlogs.

This brings us full circle, to the CDI units I mentioned at the outset. When a DDS suspects fraud in the course of conducting a CDR or redetermination, they will frequently refer such a case to the CDI unit for investigation and, where indicated, criminal prosecution. Both CDRs and CDIs are invaluable integrity tools and represent wise investments.

Conclusion

The work I've detailed today, encompassing both integrity and service-related aspects of SSA's disability processes, is only a brief glimpse of the many ways in which our auditors are providing information and recommendations to SSA and keeping Congress and the public informed. I look forward to working with your Subcommittees in the coming years in this area, and in all aspects of the OIG's efforts, both audit and investigative, as we join together to prevent and detect fraud, waste, and abuse in SSA's programs and operations.

Thank you again for the invitation to testify today, and I'd be happy to answer any questions.

Chairman TANNER. Thank you very much for your timely opening statement.

Mr. Bertoni, we are pleased to recognize you.

**STATEMENT OF DANIEL BERTONI, DIRECTOR, EDUCATION,
WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT
ACCOUNTABILITY OFFICE.**

Mr. BERTONI. Mr. Chairman, Members of the Subcommittee, good morning. I am pleased to be here to discuss challenges facing SSA with respect to disability workloads and field office customer service. SSA provides services that touch many lives, including millions who apply for disability benefits each year and those seeking retirement benefits and a host of other critical services.

For years, the agency has faced difficulties managing disability workloads and making timely decisions. In fact, over the last decade, the disability backlog grew to over half a million claims, and many claimants are waiting years for a final decision.

In other mission-critical areas, SSA has also experienced service declines, with millions of customers waiting longer to be served and millions more having their phone calls go unanswered.

My testimony today is based on our prior work and focuses on two areas, factors contributing to SSA's service delivery challenges and actions the agency is taking to better serve those who apply for disability benefits and other services. In summary, two key drivers have contributed to disability backlogs and other service delivery challenges, rising numbers of claims and staffing shortfalls.

By the start of fiscal year 2007, backlog claims reached 576,000, A growth rate of 120 percent over 1997 levels. And over the years, spikes in benefit applications due to economic downturns, aging baby boomers, referrals from other benefit programs, changes to program eligibility requirements and increased outreach have contributed to the backlog of claims. While backlogs have occurred at all stages of the process, they are most concentrated at the hearings level for 7 of the 10 years that we reviewed.

In concert with the growth of pending claims, processing times at most levels also increased. And for claims that were repealed, 30 percent, it took between 600 and 1,000 days to process. The rise in disability backlogs has coincided with high rates of turnover and attrition of experienced disability examiners, as well as shortfalls in a number of administrative law judges and hearing office support staff, such as decision writers, attorneys, claims technicians and others that prepare cases for review.

Beyond the challenges associated with disability claims, SSA field officers face similar pressures driven in part by increasing workloads. Last year we reported that field office waiting times increased by 40 percent, and they had 3 million customers waiting more than 1 hour to be served. Moreover, 51 percent of those calling SSA's field offices had at least one earlier call that had gone unanswered.

Over the years, SSA has undertaken several initiatives to improve the disability process and address other challenges. Unfortunately, as we have noted in several prior reports dating back more than a decade, some initiatives have faltered for a variety of reasons, including poor planning and execution. Others improved the process but were too costly and subsequently abandoned.

In 2006, SSA introduced a new set of comprehensive reforms to improve the accuracy, consistency and timeliness of the claims process called the Disability Service Improvement Initiative or DSI.

However, this also yielded mixed results due to rushed implementation, poor communication and higher-than-anticipated costs, and many aspects were ultimately suspended.

In light of the considerable investment at DSI, we recommended that SSA conduct a thorough evaluation to determine what, if any, aspects should be continued. We also recommended that, going forward, SSA should develop a systematic planning, risk analysis and evaluation framework to increase the likelihood that future initiatives will succeed.

In 2007, SSA outlined its current plan, which focuses on breaking the hearings-level backlog. Key initiatives include updating SSA's medical criteria, expediting cases for which approval is likely and improving hearings office capacity through hiring and other means.

SSA has also received \$500 million in stimulus funds to assist in processing key workloads. We currently have work underway assessing the plan's potential to eliminate the hearings backlog by 2013 as targeted. To address field office customer service challenges, the agency is redistributing work to offices at capacity, using managers to perform work typically conducted by lower-graded staff and deferring some program integrity workloads, such as continuing eligibility reviews. Unfortunately, this can result in some beneficiaries receiving payments who are no longer eligible.

At present, it is unclear how SSA will meet future service delivery demands given its current organizational configuration and business processes. The volume of work conducted at SSA's field offices has increased markedly over time while staff turnover and losses persist. Moreover, projected staff retirements over the next several years will further tax the agency. And we have recommended that SSA develop a comprehensive service delivery plan to better position itself to serve changing customer demographics and service needs.

Mr. Chairman, this concludes my statement, and I am happy to answer any questions you or others may have. Thank you.

[The prepared statement of Mr. Bertoni follows:]

United States Government Accountability Office

GAO

Testimony
Before the Subcommittees on Income
Security and Family Support and Social
Security, Committee on Ways and Means,
House of Representatives

For Release on Delivery
Expected at 10:50 a.m. EST
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SOCIAL SECURITY ADMINISTRATION

Further Actions Needed to Address Disability Claims and Service Delivery Challenges

Statement of Daniel Bertoni, Director
Education, Workforce, and Income Security



GAO-09-511T

GAO Highlights

Highlights of GAO-09-511T, a testimony to the Subcommittees on Social Security and on Income Security and Family Support, Committee on Ways and Means, House of Representatives

Why GAO Did This Study

For years, the Social Security Administration (SSA) has experienced challenges managing a large disability workload and making timely decisions. In fiscal year 2006, SSA made about 3.7 million disability claims decisions, while over a million were awaiting a decision. Further, SSA has faced staffing challenges and difficulties managing its workloads at its network of approximately 1,380 field offices, where millions of people go to apply for disability and retirement benefits, to obtain Social Security cards, and for a host of other services.

The Subcommittees on Income Security and Family Support, and on Social Security, House Committee on Ways and Means, asked GAO to address (1) key service delivery challenges facing SSA, particularly with respect to the backlog of disability claims, and (2) steps SSA is taking to address these challenges. This testimony is based primarily on reports assessing trends in disability claims processing and backlogs, steps SSA is taking to reduce the backlog, and other challenges SSA faces in meeting future service delivery needs. Certain information was updated to reflect recent legislative changes.

To view the full product, click on GAO-09-511T. For more information, contact Daniel Berford at (202) 512-7215 or berford@gao.gov.

March 24, 2009

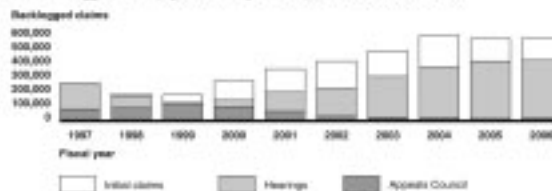
SOCIAL SECURITY ADMINISTRATION

Further Actions Needed to Address Disability Claims and Service Delivery Challenges

What GAO Found

In recent years, SSA has experienced a growing backlog of disability claims and deteriorating customer service at field offices. SSA's total backlog of disability claims doubled from 1997, reaching 576,000 in 2006, which has resulted in claimants waiting longer for final decisions. The backlog was particularly acute at the hearings level (see fig.). SSA also experienced declines in field office service delivery, with average customer wait times in field offices increasing by 40 percent from 2002 to 2006, and over 3 million customers waiting more than 1 hour to be served in 2008. Two key factors likely contributed to the backlog and service delivery challenges: (1) staffing reductions or turnover of field office staff and key personnel involved in the disability claims process, and (2) increased workloads. In particular, initial applications for disability benefits grew by more than 20 percent over the past 10 years. SSA projects further increases in workloads as the baby boom generation reaches its disability-prone years and retires.

Total Backlogged Claims, by Level of Adjudication, Fiscal Years 1997 to 2006



Source: GAO analysis of SSA data.

SSA has taken steps to improve its disability claims process, reduce the claims backlog, and manage its field office workloads, but some efforts were hampered by poor planning and execution while others are too recent to evaluate. In 2004, SSA introduced a comprehensive set of reforms to improve the efficiency, accuracy and timeliness of the disability claims process. However, this initiative produced mixed results and many aspects were suspended to focus on the hearings backlog and other priorities. While final decisions regarding many aspects of this reform are pending, SSA outlined a new plan in 2007 that concentrates on clearing out backlogged cases at the hearings level. GAO is currently reviewing this plan as part of its ongoing work. To address overall workloads and maintain customer service, SSA has shifted workloads to less busy offices and deferred workloads it deemed lower priority. However, deferring certain workloads, such as continuing eligibility reviews, can result in beneficiaries receiving payments who no longer qualify. In response to a recent GAO recommendation, SSA agreed to develop a single service delivery plan to help it better manage future service delivery challenges. However, it remains unclear how SSA will address current and future challenges given its current service delivery infrastructure and resource constraints.

United States Government Accountability Office

Mr. Chairmen and Members of the Subcommittees:

I am pleased to have the opportunity to discuss challenges facing the Social Security Administration (SSA) with respect to its disability claims processing and field office service delivery. SSA provides a number of services that touch many lives. In particular, each year millions of Americans who believe that they can no longer work because of severe physical or mental impairments, apply for cash benefits through the Social Security Administration's (SSA) two disability programs—Disability Insurance (DI) and Supplemental Security Income (SSI). In addition, SSA annually processes millions of applications for retirement benefits through its Old-Age and Survivors Insurance (OASI) program, issues millions of Social Security cards, and provides many other services through its large and decentralized workforce. In fiscal year 2008, SSA had an administrative budget of over \$11 billion, and employed about 63,000 employees, 44 percent of whom are located in approximately 1,300 field offices across the country.

For more than 20 years, SSA has faced challenges managing a large disability claims workload and making timely decisions. During fiscal year 2008, SSA made about 3.7 million disability claims decisions, and some 1.5 million disability claims were awaiting a determination. SSA's data show that disability applicants can wait years for their claims to be resolved at the final administrative appeals level.¹ Disability claims—as well as retirement claims—are expected to increase further as the baby boom generation continues to enter its disability-prone years and begins to retire. The current economic downturn may prompt even more people to apply for SSA benefits as a source of income security. Constrained budgets and staffing reductions, coupled with increases in retirement and disability filings, have also challenged field offices' ability to meet the demand for services.

For today's hearing, you asked us to address (1) key service delivery challenges facing SSA, particularly with respect to the backlog of disability claims, and (2) steps SSA is taking to address these challenges. My statement draws on a number of prior GAO reports that were conducted in accordance with generally accepted government auditing standards. (See

¹In light of these and other disability program challenges at SSA and other agencies, we designated federal disability programs a high-risk area in 2003. GAO, *High-Risk Series: An Update*, GAO-09-271 (Washington, D.C., January 2009).

related GAO products.) We updated information as appropriate to reflect recent legislative changes.

Summary

In summary, SSA has experienced a growing backlog in disability claims, as well as deteriorating customer service. From fiscal years 1997 to 2006, SSA's total backlog of disability claims—the number of claims exceeding the amount that should optimally be pending at year end—doubled, reaching about 576,000 in 2006. The backlog was particularly acute at the hearings level. Backlogs, in turn, resulted in claimants waiting longer for a final decision from SSA. In addition, at field offices, SSA customers experienced longer wait times and unanswered phones. For example, between 2002 and 2006, average customer wait times in field offices increased by 40 percent, and in fiscal year 2008, more than 3 million customers waited over 1 hour to be served. Two key factors likely contributed to these disability claims backlogs and service delivery challenges. First, SSA experienced reductions or turnover in field office staff and key personnel involved in the disability claims process, such as disability examiners and administrative law judges (ALJ). Second, SSA experienced an increase in workloads. In particular, from 1987 to 2006, initial applications for DI and SSI disability benefits increased more than 30 percent, spurred by, among other factors, the aging of the baby boom generation, downturns in the economy, increased referrals from other programs, and changes in disability eligibility requirements in prior years. SSA projects that its workloads will continue to increase over the coming years as the baby boom generation retires.

SSA has taken steps to improve its disability claims process and reduce the backlogs as well as to manage its overall workloads, but some efforts have been hampered by poor planning and execution while others are too recent to evaluate. One of SSA's more recent efforts to improve its disability claims process—a comprehensive set of reforms called the Disability Service Improvement (DSI) initiative that was piloted in the Boston region in 2006—produced mixed results. Many aspects of DSI were ultimately suspended to focus on the hearings backlog and SSA's electronic processing system. In May 2007, SSA outlined a new plan for eliminating the hearings level backlog. We are currently evaluating the extent to which the hearings backlog reduction plan includes components of sound planning and the potential effects it may have on the hearings backlog and other SSA operations. In addition, to address overall workloads and maintain customer service in field offices, SSA shifted workloads to less busy offices and deferred work that the agency deemed as lower priority. However, deferring key workloads, such as reviews of continuing eligibility for benefits, means that beneficiaries who no longer

qualify may still receive payments erroneously. More recently, in response to our recommendation that SSA develop a detailed service delivery plan, SSA is consolidating its various planning efforts into a single planning document. SSA stated this document will reflect its efforts to address service and staffing challenges related to the disability and retirement wave of the baby boom generation. However, it remains unclear how SSA will manage growing workloads with its current infrastructure of approximately 1,300 field offices and resource constraints, while minimizing the deferral of key workloads and declines in customer service.

Background

SSA administers three major benefit programs: Old-Age and Survivors Insurance (OASI), which provides benefits to retired workers and their families and to families of deceased workers; (2) Disability Insurance (DI), which provides benefits to eligible workers with disabilities and their family members; and (3) Supplemental Security Income (SSI), which provides income for aged, blind, or disabled individuals with limited income and resources. In addition to paying benefits through these three programs, SSA also issues Social Security cards, maintains earnings records, and performs various other functions through a network of field, state and headquarter offices.¹

SSA's field offices are the agency's primary points for providing face-to-face service to the public. In addition to processing new disability and retirement claims, field offices manage other workloads related to program integrity, such as determining whether certain individuals with disabilities remain eligible to receive disability payments based on program criteria. Besides field offices, SSA operates Social Security Card Centers, which issue Social Security numbers; Teleservice Centers, which offer services nationally via a toll-free telephone number; and Program Service Centers, which maintain earnings records, in addition to other functions. In 2008, SSA's administrative budget for managing its operations was \$11.1 billion.

Disability Process

The process for deciding who is eligible for SSA disability benefits is complex, consuming a large portion of SSA's administrative budget. Several state and federal offices, and several adjudication levels are

¹In addition to these services, SSA performs work related to verifying employment eligibility and Medicare program assistance.

vocational expert testimony. A claimant who is dissatisfied with the hearings decision may request, within 60 days of the ALJ's decision, that the Appeals Council review the claim. The Appeals Council is SSA's fourth and final adjudicative appeals level and is comprised of administrative appeals judges. The Appeals Council may uphold, modify, or reverse the ALJ's action, or it may return the claim back to the ALJ for another hearing and issuance of a new decision. The decision of the Appeals Council is the Commissioner's final decision. To appeal this decision, the claimant must file an action in Federal Court.

Measuring Performance

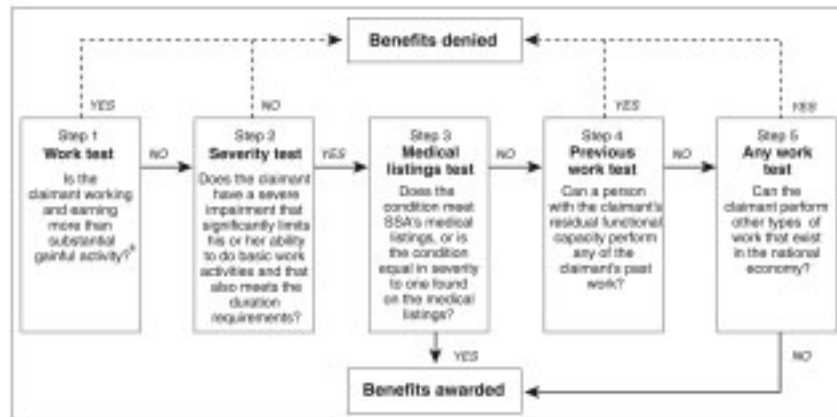
SSA measures its performance in managing its workloads in various ways. For its disability claims process, at each level of the claims process SSA tracks the number of claims pending a decision each year and the time it takes to issue a decision. The agency also uses a relative measure to determine the backlog by considering how many cases should optimally be pending at year-end. This relative measure is referred to as "target pending" and is set for each level of the disability process with the exception of the reconsideration level. From 1999 to 2005, SSA's target pending was 400,000 for claims at the initial stage and 300,000 and 40,000 for the hearings and Appeals Council stages, respectively.² The number of pending claims that exceed these numbers represents the backlog. With respect to service delivery, SSA uses various measures of performance, including work productivity (average work units performed per year, per employee), customer wait times at field offices, and overall customer satisfaction with service delivery.

SSA Has Faced Challenges with Disability Claims Backlogs and Field Office Service Delivery

SSA has experienced increased backlogs and processing times associated with disability claims in recent years, as well as declines in measures of field office service. These trends are likely due to rising workloads and staffing shortfalls.

²SSA stated that it had never communicated the target pending amount of 400,000 to DIOs. Further, they stated that they had set a new target pending of 577,000 for 2006 and 2007. SSA indicated that they had funded the DIOs at a level consistent with 577,000 claims pending in recent years.

Figure 1: SSA's Five-Step Sequential Evaluation Process for Determining Disability



Source: GAO analysis of SSA data.

⁸In 2007 the substantial gainful activity (SGA) threshold was \$1,260 per month for blind recipients and \$960 per month for individuals with other disabilities.

Claimants who are dissatisfied with the initial DDS determination have up to three additional levels of adjudicative appeal. The claimant may request a "reconsideration" of the claim, which is conducted by DDS personnel who were not involved in the original decision. If the reconsideration team concurs with the initial denial of benefits, the claimant then has 60 days from the time of this decision to appeal and request a hearing before an administrative law judge (ALJ).⁹ ALJs, who are based in 140 hearing offices located throughout the nation, can consider new evidence and request additional information including medical evidence or medical and

⁹As part of one of SSA's process improvement initiatives, SSA eliminated the reconsideration step in 10 states. In these states, claimants who are dissatisfied with their initial decision would have their appeal reviewed by an administrative law judge.

involved in determining whether a claimant is eligible for benefits. The process begins when an individual files an application for disability benefits at an SSA field office, online or over SSA's toll-free number. In each case, an SSA representative determines whether a claimant meets the non-medical eligibility criteria of each program, such as ensuring that an SSI applicant meets income requirements, or determining if a DI applicant has a sufficient number of work credits. If applicants meet the non-medical eligibility criteria, field office personnel will help claimants complete their applications and obtain claimants' detailed medical, education, and work histories. The completeness of the information gathered at this time can affect the accuracy and speed of the decision.

After the field office determines that an applicant has met SSA's non-medical eligibility requirements for disability benefits, up to four adjudicative levels may review the applicant's claim for eligibility generally based on medical criteria. The first adjudicative level is the state Disability Determination Services (DDS),² where a disability examiner, working with medical staff, must make every reasonable effort to help the claimant get medical reports from physicians, hospitals, clinics, or other institutions where the claimant has received past medical treatments.³ After assembling all medical and vocational information for the claim, the DDS examiner in consultation with appropriate medical staff determines whether the claimant meets the requirements of the law for having a disability. In doing so, the DDS examiner uses a five-step, sequential evaluation process that includes a review of the claimant's current work activity, severity of impairment, and vocational factors. See figure 1.

²Although SSA is responsible for the program, the law calls for initial determinations of disability to be made by state DDS agencies. The work performed at DDS offices is federally financed and carried out under SSA disability program regulations, policies, and guidelines. See 42 U.S.C. §425(a)(1).

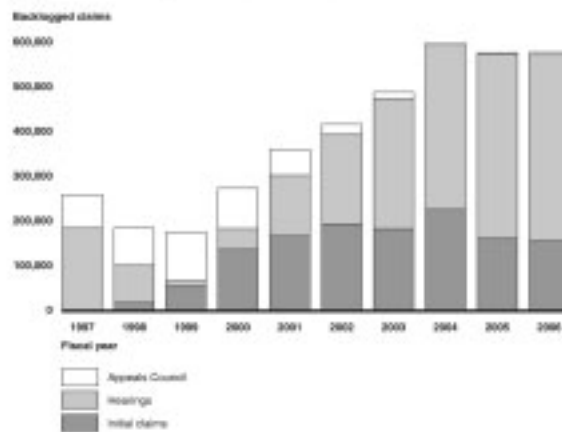
³The examiner may also ask the claimant to take a special examination called a "consultative examination," where physicians or other medical professionals hired by SSA gather more information on the claimant's condition.

Disability Claims Process Challenges

The total number of backlogged disability claims in SSA more than doubled over the last decade, with the greatest accumulation of claims occurring at the hearing level. By the close of fiscal year 2006, the total number of backlogged disability claims, by SSA's measure, reached 576,000, which represented an overall growth rate of more than 130 percent from fiscal year 1997. As shown in figure 2, backlogs of varying degree have occurred at all stages of the claims process where backlogs are calculated. However, since fiscal year 2001, these claims were concentrated most heavily at the hearings level and, to a lesser extent, at the initial processing level within the DDS offices.⁷ The hearings level accounted for the largest share of backlogged claims for 7 of the 10 years we reviewed. In fiscal years 2000 and 2001, the DDS level accounted for the largest share of the backlog. The Appeals Council had the largest backlog in fiscal year 1999, but dramatically reduced these numbers by 2006.

⁷We do not report backlogs for the reconsideration stage because SSA could not provide data that would allow us to do so.

Figure 2: Total Backlogged Claims, by Level of Adjudication, Fiscal Years 1997 to 2006

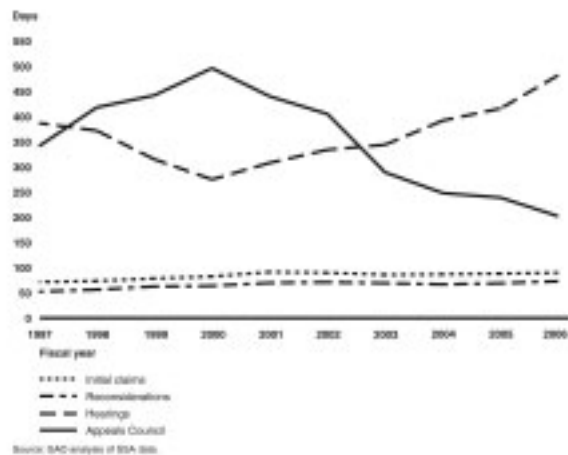


Source: GAO analysis of SSA data.

In concert with changes in the total claims backlog, average processing times for disability claims at most adjudicative levels increased. As shown in figure 3, although processing times decreased dramatically at the Appeals Council level, they increased markedly at the hearings level, and somewhat at the initial and reconsideration levels.³ For example, from 1997 to 2006, processing times increased about 30 days at the DDS level and 95 days at the hearings level. Further, in fiscal year 2006, 39 percent of all hearing decisions took between 365 to 599 days to process; 28 percent took 600 to 899 days to process; and 2 percent took over 1,000 days. For two regions (region 5 in Chicago and region 10 in Seattle), nearly half of all hearing decisions made in fiscal year 2006 took longer than 600 days to complete.

³Processing times reported in this report do not reflect time spent working on a claim prior to it reaching a DDS office (such as time spent at an SSA field office).

Figure 3: Average Claims Processing Time for DGS Initial Claims, DGS Reconsiderations, Hearings, and Appeals Council Decisions, in Days, Fiscal Years 1997 to 2006



One contributor to increased disability claims backlogs has been spikes in new applications. For example, the number of initial applications for DI and SSI benefits increased by 21 percent overall from fiscal years 1997 to 2006, contributing to the claims backlog and adding additional pressures to field office personnel who initially review these claims. These increases can be attributed to a number of influences: periodic downturns in the economy, the aging of the baby boom population, increased referrals from other programs, previous changes in program eligibility requirements and regulations, and increased program outreach. Officials in one region recounted one initiative that targeted outreach to the homeless, which increased applications and also added to processing times. They also attributed some processing delays to the time required to track homeless candidates and help them document their disabilities. With respect to the economy, SSA officials, DGS senior managers, and our prior work all

attest to the fact that economic downturns from a failing industry or natural disaster can precipitate new disability applications.

The growth in the disability claims backlogs has also coincided with losses in key personnel associated with the disability claims process. For example, although DDS staff increased about 4 percent from 1997 to 2006, DDSs have experienced high rates of staff turnover and attrition. Attrition rates for DDS disability examiners, who are state employees, were almost double that of SSA federal staff. Many DDS senior managers we spoke with said that turnover of experienced disability examiners has affected productivity. For example, from September 1998 to January 2006, over 20 percent of disability examiners hired during that period left or were terminated within their first year. DDS officials said the loss of experienced staff affects DDS' ability to process disability claims workloads because it generally takes newly hired examiners about 3 years to become proficient in their role.

Further, at the hearings level, SSA generally experienced shortfalls in ALJs and support staff—decision writers, staff that prepare case files for review, attorneys, and claims technicians. The number of ALJs available to conduct hearings ranged from a high of 1,987 in 1988 to a low of 918 in 2001, ending at 1,018 in 2006. Although SSA has had fewer than 1,100 ALJs over the last 10 years, in May 2006, SSA's Commissioner noted that the agency requires no less than 1,250 ALJs to properly manage its current pending workload. With respect to support staff, numbers ranged from a high of 5,560 in 1999 to a low of 4,700 in 2006. Although SSA managers and judges would like to see a ratio of 5.25 support staff per ALJ, the actual ratio has more often been lower, ranging from a ratio of 4.59 in 1997 to 4.12 in 2006. Only in 2001, when the number of ALJs was at its lowest point, was the target ratio achieved.

Finally, a number of initiatives undertaken by SSA to improve the disability process and potentially remedy backlogs have faltered for a variety of reasons, including poor planning and execution. In fact, some initiatives had the effect of slowing processing times by reducing staff capacity, increasing the number of appeals, or complicating the decision process. Several other initiatives improved the process, but were too costly and subsequently abandoned. This was the case for several facets of a major 1997 initiative, known as the "Disability Process Redesign," which sought to streamline and expedite disability decisions for both initial claims and appeals. In the past, we reported that various initiatives within this effort became problematic and were largely discontinued due to their ineffectiveness and high cost. Further, implementation of an electronic

system enhanced some aspects of the disability claims process, but also caused delays due to systemic instability and shutdowns at the DDS and hearings offices.¹⁰ Further, the "Hearings Process Improvement" initiative, implemented in 2000, involved reorganizing hearing office staff and responsibilities with the goal of reducing the number of appeals. However, many of the senior SSA officials we spoke with expressed the opinion that this initiative left key workloads unattended and was therefore responsible for dramatic increases in delays and processing times at the hearings level.

Field Office Service Delivery Challenges

In addition to disability claims backlogs and increased processing times, other aspects of SSA's service delivery at field offices have declined in recent years. From fiscal year 2002 to 2006, the average time customers waited in a field office to speak with an SSA representative increased by 40 percent from 15 to 21 minutes. In fiscal year 2006, more than 3 million customers waited for over 1 hour to be served. Further, SSA's 2007 Field Office Caller Survey found that 51 percent of customers calling selected field offices had at least one earlier call that had gone unanswered. Because SSA based its results only on customers who were ultimately able to get through, the actual percentage of customers that had unanswered calls was likely even higher. Overall these factors may have contributed to a 3 percent drop in SSA's overall customer satisfaction, from 84 percent in fiscal year 2005 to 81 percent in fiscal year 2008.

Declines in field office service delivery measures coincided with a period of staff turnover and losses agency wide. From fiscal year 2006 to 2008, SSA experienced a 2.9 percent reduction in total employees and a 4.4 percent reduction in field office employees. At the same time, employees and managers reported high levels of stress. We asked 153 employees at 21 offices to rate the stress they experienced in attempting to complete their work in a timely manner and 65 percent reported feeling stress to a great or very great extent on a daily basis, while 74 percent of office managers described high levels of stress.

Declines in service delivery measures also coincided with increased workloads. For example, the number of annual field office visitors

¹⁰In 2006, SSA revised a prior plan to transform its paper-based processing system to a national, fully integrated electronic processing system. The initiative had several goals including (1) reducing delays caused by losing paper folders during transfers to other offices, (2) providing more complete disability information on claimants, and (3) reducing keying errors as well as storage and mailing costs.

	<p>increased by about 2.5 million customers, from 41.9 million in fiscal year 2006 to 44.4 million in fiscal year 2008. In addition, SSA's field offices experienced growth in other types of workloads. Between 2006 and 2008, SSA performed more work related to managing beneficiary rolls¹² and assigning Social Security numbers. Finally, the work SSA performs on behalf of other federal agencies has grown. For example, new elements of the Medicare prescription drug program and new state laws requiring federal government verification of work authorization are resulting in additional work and field office visits.</p>
Future Workload and Staffing Challenges	<p>SSA projects an increase in disability claims and other workloads over the coming years while at the same time anticipates the retirement of many experienced workers. Specifically, SSA projects:</p> <ul style="list-style-type: none"> • An overall 13 percent increase in retirement and disability claims from fiscal years 2007 to 2017. • A growth of 22 percent in the number of retirement and disability beneficiaries from 2007 to 2015. • That nearly 40 percent of its current workforce will be eligible to retire in 5 years and 44 percent will retire by 2016.
SSA Continues to Take Steps to Address Disability Claims Backlogs and Service Delivery Challenges	<p>SSA continues to take steps to address disability claims backlogs and service delivery challenges, including efforts to improve its disability claims process, redistribute workloads across field offices, and develop a plan for addressing future growth in disability and retirement claims. Some of these efforts have been hampered by poor planning while others are too recent to evaluate.</p>
Improving the Disability Evaluation Process	<p>SSA has pursued a number of initiatives to improve the overall efficiency and effectiveness of its disability claims process. For example, the DSL initiative, piloted in 2006, was designed to produce correct decisions on</p>

¹²The number of people receiving monthly benefits from SSA rose from nearly 50 million in 2005 to 60 million in 2008. Such an increase affects SSA's postentitlement workload (the workload associated with actions occurring after customers become eligible for benefits) including changes of address, benefit recalculations, overpayments, and reviews of Disability and SSI beneficiaries' status to determine their continuing eligibility for benefits.

disability claims as early in the application process as possible, with the expectation that DSI would reduce both appeals of denied claims and future backlogs. The plan involved several envisioned changes to improve the disability determination process. However, results of the initiative by early 2007 were mixed. (See table 1 for examples of these initiatives and their results.) In general, we found that implementation of these and other DSI initiatives were hampered by rushed implementation, poor communication, and inadequate financial planning. Overall, the DSI initiatives cost more than the agency had originally estimated.

Table 1: Examples of DSI Initiatives and Their Results

Name of initiative	Description	Results
Quick Disability Determination Process	Used an automated screening function to identify cases that have a high probability of being approved for expedited processing	Generally produced timely and accurate decisions and is targeted for national roll-out
Federal Reviewing Official	Replaced the reconsideration level with attorneys that review appealed initial decisions	Achieved positive decision accuracy and documentation; experienced staffing challenges; contributed to increased pending claims and processing times; cost more than originally estimated
Medical and Vocational Expertise Initiative	Provided medical expertise to the Federal Reviewing Official	Experienced staffing challenges; experienced difficulty entering into contracts with medical professionals; contributed to increased pending claims; cost more than originally estimated

Source: Based on information presented in DSO-09-05.

The future of DSI currently remains uncertain. While the Quick Disability Determination will likely be implemented nationwide, SSA suspended national roll-out of most portions of the DSI initiative, and issued a proposed rule to suspend the Federal Reviewing Official and Medical and Vocational Expertise initiatives in the Boston region. SSA has said that it will continue to conduct an evaluation of DSI initiatives to determine whether they should be reinstated. Because SSA's assessment of DSI components to date has been limited, in 2007 we recommended that SSA conduct a thorough evaluation of DSI before deciding which elements should be implemented or discontinued. SSA noted that it would continue to collect data and monitor outcomes to evaluate DSI, but that, due to

constrained resources, it may not be able to collect sufficient data to ensure the reliability of the results.

SSA suspended DSL, in part, to reform on reducing its hearings backlog, which had reached critical levels. In May 2007, SSA outlined a new hearings backlog reduction plan that focuses on reducing the existing backlog and preventing its recurrence through a series of steps that employ some prior innovations and also new initiatives. However, officials we spoke with at SSA emphasized that the hearings backlog reduction plan is not meant to replace the DSL initiative but to complement it until a final decision is made regarding the future of DSL. Steps in the plan include updating SSA's medical eligibility criteria, expediting cases for which eligibility is more clear-cut, improving hearings office capacity and performance, and other actions. Also in the plan, the Commissioner proposed dedicating \$25 million to improve SSA's electronic processing system. SSA's efforts to reduce the hearings backlog may be supported by additional funds through recent legislation. Specifically, the American Recovery and Reinvestment Act of 2009 (ARRA) allocated \$500 million to SSA to assist with processing workloads and related technology acquisitions.¹¹ SSA has not yet determined how it will use this money for its various workloads.

In December 2007, we recommended that SSA take the necessary steps to increase the likelihood that new initiatives will succeed, such as performing comprehensive planning to anticipate challenges of implementation, including the appropriate staff in the design and implementation stages, establishing feedback mechanisms to track progress and problems, and performing periodic evaluations.¹² SSA agreed with the intent of this recommendation, noting that it would take necessary steps to improve the likelihood of success of future initiatives. Accordingly, we are currently evaluating the extent to which the hearings backlog reduction plan includes components of sound planning and the potential effects of the plan on the hearings backlog and other SSA operations. As part of this review, we will (1) examine the plan's potential to eliminate the hearings-level backlog, (2) determine the extent to which

¹¹In addition, ARRA allocated \$500 million for the replacement of the National Computer Center. See the American Recovery and Reinvestment Act of 2009, H.R. 1, Division A, Title VIII, at 71 (enrolled bill).

¹²Social Security Disability: Better Planning, Management, and Evaluation Could Help Address Backlogs (GAO-08-40), December 7, 2007.

	the plan includes components of sound planning, and (3) identify potential unintended effects of the plan on hearings level operations and other aspects of the disability process. We expect to complete our work later this year.
Shifting Workloads and Maintaining Staffing Levels	<p>To address overall workloads and maintain customer service, SSA is shifting workloads to less busy offices. For example, if a field office has work demands that it cannot immediately cover, that office can request that some work be transferred to another office. Offices that have a particular expertise in that particular type of work will make themselves available, as they can process this work more quickly. These efforts likely contributed to increased productivity levels.¹¹ Specifically, the average amount of work produced by field office employees increased by 2.9 percent between fiscal years 2005 and 2008.</p> <p>Managers also are addressing workloads by using claims processing personnel to perform the duties typically conducted by lower-graded employees, and in some cases, office managers take on duties of their employees. Such duties include answering the telephone, providing initial services to arriving customers, processing requests for new or replacement Social Security cards, and conducting some administrative duties. Although visiting customers need attention, this practice may reduce time spent on other workloads, such as claims processing or managing the office. Moreover, as we noted earlier, the stress of expanding workloads and staffing constraints can negatively impact morale.</p> <p>With fewer staff available, SSA has deferred some workloads, although this practice may have significant drawbacks. Specifically, SSA has focused on field office work it considers essential to its "core workloads," such as processing new claims for Social Security benefits and issuing Social Security cards, while deferring other types of work including changes of address, changes to direct deposit information, and reviews to determine beneficiaries' continuing eligibility for DI and SSI benefits. Reviews of continuing eligibility, however, are key activities in ensuring payment accuracy. Such reviews yield a lifetime savings for both DI and SSI of \$10 for every dollar invested, according to SSA. In recent years, SSA</p>
	¹¹ SSA cites additional reasons for productivity increases, including automation efforts and simplification of programs and policies.

has reduced the number of reviews conducted, citing budget limitations and an increase in core work. When reviews of benefits are delayed, some beneficiaries continue receiving benefits when they no longer qualify.

SSA has used a variety of strategies to maintain adequate staffing levels overall, although it faces challenges with hiring, training and retaining staff. For example, SSA: offers recruitment, relocation, and retention bonuses to individuals with needed skills; offers workplace flexibilities; uses dual compensation waivers from the Office of Personnel Management for certain hard-to-fill positions; and developed recruiting efforts to reach out to a broader pool of candidates, including retired military and veterans with disabilities. SSA may also use AERRA money to hire additional staff to help manage some of its workloads.¹¹ However, in the past, SSA has encountered obstacles that delay hiring. For example, SSA's ability to hire sufficient ALJs has been hindered by the length of the Office of Personnel Management's review process. In addition, field office managers and staff at many locations we visited stated that it typically takes 2 to 3 years for new employees to become proficient after being hired. For disability examiners, this process can take about 2 years, according to SSA staff, while at the same time turnover is high.

Developing a Consolidated Plan to Address Future Growth

More recently, in response to our recommendation that SSA develop a detailed service delivery plan,¹² SSA stated that it intends to consolidate its various planning efforts into a single planning document. SSA commented that its consolidated document will, at minimum, include comprehensive plans for expanding electronic services for customers; increasing the centralization of receiving phone calls and working claims from customers while maintaining the network of local field offices; enhancing phone and video services in field offices (where applicable) and piloting self-service personal computers in the reception areas of those offices; and continuing to assess the efficiency of field offices. While a consolidated planning document will better reflect the variety of planning efforts SSA has to improve its operations, it remains unclear how SSA will manage growing

¹¹As noted previously, AERRA allocated \$500 million to SSA to assist with processing workloads and related technology acquisitions, but SSA has not determined how it will use these funds. See the American Recovery and Reinvestment Act of 2009, S.R. 1, Division A, Title VIII, at 71 (enrolled bill).

¹²Social Security Administration: Service Delivery Plan Needed to Address Baby Boom Retirement Challenges (GAO-09-24, January 9, 2009).

workloads with its current infrastructure of approximately 1,300 field offices, while minimizing the deferral of its workloads and declines in customer service.

Concluding Observations

By all accounts, the operational challenges that SSA faces are projected to become more acute in the coming years as our society ages. SSA's aging workforce and our faltering economy may exacerbate these challenges. Over the years and across many fronts, SSA has taken numerous and varied steps to address its backlog of disability claims and its service delivery challenges, but often with mixed results or at the expense of some other key services. Funds that SSA receives through the ARRA may relieve staffing shortages and potentially improve electronic case processing, but more concerted efforts will likely be needed to get in front of the challenges ahead. We have recommended that, to increase the probability of success for any new initiatives aimed at reducing the backlog of claims, SSA focus on comprehensive planning that anticipates implementation challenges by involving key staff in design and implementation, establishing feedback loops, and performing periodic evaluations to ensure that reforms are executed effectively. We have also recommended that SSA develop a service delivery plan that addresses in detail how it will successfully deliver quality customer service in the future while managing growing work demands with constrained resources. SSA agreed that it should take necessary steps to improve the likelihood of success of future initiatives and to develop a comprehensive service delivery plan, and noted that they are taking steps toward these ends. We look forward to SSA's progress as it moves forward with these efforts.

Mr. Chairman and Members of the Subcommittee, this concludes my remarks. I would be happy to answer any questions that you or other Members of the Subcommittee may have.

GAO Contact and Acknowledgments

For further information, please contact Daniel Bertoni at (202) 512-7215 or BertoniD@gao.gov. Also contributing to this statement were Michele Grigich, Erin Gottland, and Jessica Orr. Advisors included Blake Ainsworth, Barbara Bovbjerg, Julianne Cutts, Shelia Drake, Cindy Fagnoni, Sal Sorbello, and Paul Wright. Roger Thomas provided legal advice.

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Chairman TANNER. Thank you, Mr. Bertoni.
Ms. Hathaway, we are pleased to recognize you.

STATEMENT OF PEGGY HATHAWAY, CO-CHAIR, SOCIAL SECURITY TASK FORCE, CONSORTIUM FOR CITIZENS WITH DISABILITIES

Ms. HATHAWAY. Thank you for inviting me here to testify today on behalf of the Consortium For Citizens With Disabilities. We bring the voice of the consumer to this debate, this discussion.

Social Security Title II and SSI benefits, as well as the accompanying Medicare and Medicaid coverage, are the means of survival for millions of people with severe disabilities. They rely on SSA to promptly and fairly decide on their claims for disability benefits. Your constituent services staffs have likely reported the heartbreaking stories and consequences of intolerable delays in the backlogs.

When a decision is appealed, people often wait years for a hearing, longer for a decision and even longer for actual payment of benefits. And as others have pointed out, that is even after they have gone through the several-months-long initial procedure. Behind the statistics, people's lives are unraveling. Families are torn apart. Homes are lost. Medical conditions deteriorate. Financial security crumbles, and many individuals die before a decision is made.

This month, the National Organization of Social Security Claimants' Representatives, a CCD Member, conducted a quick survey of its Members to update how the backlogs are affecting claimants. Our written statement includes stories from a number of states. I just want to summarize a few of them briefly here for you.

Ms. A from Tennessee filed her application for benefits in 2007. She was forced to file for bankruptcy and lives on very, very little income. No hearing has been scheduled, and there has been no response to her request for an on-the-record decision.

Mr. D from Georgia has terminal hepatitis C and depends on his girlfriend for all of his support. After his March 2007 initial claim was denied, he filed for a hearing in October of 2007 and a request for an on-the-record decision as a terminal case. A year and a half later, there is no hearing scheduled and no decision.

Mr. A from Texas filed his application in September 2003, was denied, and requested a hearing in February of 2004. After several additional procedural steps, no decision has been issued 5½ years after the initial claim. In the meantime, Mr. A's house burned down, and he had to file for bankruptcy.

Mr. L from Oklahoma, I am sorry to report, committed suicide when his case was denied consideration in May of 2008. His widow is awaiting the yet-to-be-scheduled hearing.

Ms. S from South Carolina illustrates the importance of this determination for health coverage. She had no health coverage and no Medicaid because SSA had not yet found her disabled. After unhealing sores from diabetes went untreated, she died from complications of diabetes. At a posthumous hearing, the ALJ stated it was obvious that Ms. S had been disabled and issued a fully favorable decision. The medical care and Medicaid coverage that Ms. S did not receive due to the hearing delay most likely would have saved her life.

Then there is Mr. H from Iowa who has multiple sclerosis and has had a claim pending since September of 2007. He sent a letter

to his attorney, part of which I would like to read to you because it is so touching.

He says, "I am writing this brief letter to tell you about a few of the examples of what this disease has caused. Besides the day-to-day struggle just to live, it has caused my wife and me, along with our two children, financial ruin. My mortgage payment is as much as my wife makes. I receive no other income and worry day to day how to exist . . . as bad as this may sound, I have actually tried to end this with a suicide attempt in November of 2008. There isn't any way to describe this except to say it feels hopeless."

The primary reason for the increasing backlogs and reductions in other key services is that, as you have heard, until quite recently, SSA has been persistently underfunded over many years. For years, the Commissioner's budget came in at X dollars; the President's budget came in below that; and Congress appropriated even less than the President's budget, until, that was, fiscal year 2008.

So on top of the retirement and disability applications from baby boomers, along comes the economic crisis with a huge, unexpected surge in both retirement and disability applications. We are encouraged and grateful for Congress's appropriating recent funds for SSA in the economic stimulus bill, in the 2009 appropriation, and in the President's 2010 budget, including funds for program integrity. We also appreciate Commissioner Astrue's commitment to what he rightly calls the "moral imperative" to reduce the disability backlog.

SSA must also find ways to operate more efficiently. Our written testimony has a number of recommendations.

A note of caution: SSA must take care to determine how new initiatives will affect the very people for whom the system exists, people who meet the strict criteria for disability. These people face a host of personal, family, and financial circumstances that make it difficult or impossible to navigate the complex disability determination system without substantial assistance. SSA must continue to ensure that each individual's claim is fully developed before a decision is made.

To prevent tragedies similar to those that I have described, CCD urges Congress to continuously provide SSA the resources necessary to carry out its mandated responsibilities and substantially improve its service to the public. Thank you.

[The prepared statement of Ms. Hathaway follows:]

Statement of Peggy Hathaway, Vice President, United Spinal Association, Silver Spring, Maryland; on behalf of Consortium for Citizens with Disabilities Social Security Task Force

Chairman Tanner, Chairman McDermott, Ranking Member Johnson, Ranking Member Linder, and Members of the Subcommittees, thank you for inviting me to testify at today's hearing on Eliminating the Social Security Disability Backlog.

I am Vice-President for Public Policy of United Spinal Association.¹ I am here in my capacity as a Co-Chair of the Consortium for Citizens with Disabilities (CCD) Social Security Task Force. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf

¹ United Spinal Association is an organization with members in all 50 states that has been securing equal rights and access for all Americans with spinal cord injuries and disorders since 1946 when it was formed by veterans paralyzed by World War II injuries. United Spinal Association is also an authorized VA Veterans Service Organization serving veterans with disabilities of all kinds.

of the 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security Task Force (hereinafter “CCD”) focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

The focus of this hearing is extremely important to people with disabilities. Title II and SSI cash benefits, along with the related Medicare and Medicaid benefits, are the means of survival for millions of individuals with severe disabilities. They rely on the Social Security Administration (SSA) to promptly and fairly adjudicate their applications for disability benefits. They also rely on the agency to handle many other actions critical to their well-being including: timely payment of their monthly Title II and SSI benefits to which they are entitled; accurate withholding of Medicare Parts B and D premiums; and timely determinations on post-entitlement issues that may arise (e.g., overpayments, income issues, prompt recording of earnings).

We recognize and appreciate that Commissioner Astrue has made reduction and elimination of the disability claims backlog a top priority. However, despite increases in productivity, the backlog in disability determinations continues to grow, at least in part due to an unexpected increase in the number of appeals.² People with severe disabilities are experiencing increasingly long delays and decreased services in accessing these critical benefits to which they are entitled. We believe these problems have been caused primarily by persistent under-funding of SSA over many years. We are encouraged by recent additional funding for SSA but we caution that it will be offset at least in part by the unexpected surge in both disability and retirement claims due to the economic crisis.

THE IMPACT ON PEOPLE WITH SEVERE DISABILITIES OF INSUFFICIENT FUNDING FOR SSA

We must recognize the real-life impact of the backlog and the ensuing delays for individuals with disabilities who must file claims for disability benefits and wait for a decision. Behind the numbers are individuals with disabilities whose lives have unraveled while waiting for decisions—families are torn apart; homes are lost; medical conditions deteriorate; once stable financial security crumbles; and many individuals die. Numerous recent media reports across the country have also documented the suffering experienced by these individuals.

The National Organization of Social Security Claims Representatives (NOSSCR), a member of the CCD Social Security Task Force, recently conducted a quick survey of NOSSCR members for an update on the impact of the backlog on claimants waiting for decisions on their claims. The stories are located at the end of this testimony beginning on page 11. Your constituent services staffs are likely to be well aware of the situations faced by people living in your districts and provide valuable assistance and help, where possible. An attorney in Jackson, TN, told us:

We hear on a daily basis how the claimants are struggling to keep their homes, obtain their needed medications, and seek proper medical attention. When we hear our clients’ stories, the first thing we suggest to them is to contact Congressman Tanner’s office. We inform them that his office is there to help them. Sometimes our office seeks assistance from Congressman Tanner’s office on behalf of our clients. The staff at [his] office is always willing to assist. . . . However, despite efforts of Congressman Tanner’s office, there is still a long wait time for our clients. Our clients are experiencing an average of 18 months from the time we file for their hearings until one is actually scheduled. For some of our clients, it has been three (3) years between the date they filed for their benefits and their hearing before the Administrative Law Judge. This delay has put an extreme hardship on all of our clients, but some are struggling more than others.”

Many other claimants’ representatives have similar stories about the impact of the long waits on their clients. Because many claimants have no access to health insurance while they wait for a decision, their health deteriorates because they cannot obtain necessary medical treatment, sometimes as simple as antibiotics. For those who can afford COBRA coverage, the lengthy wait goes beyond the period when they can extend the coverage. Sadly, many individuals die unnecessarily or commit suicide. One attorney in Georgia had at least six clients die over the last year while waiting for decisions. Appropriate family members are more frequently

² *Plan to Eliminate the Hearing Backlog and Prevent Its Recurrence, Annual Report FY 2008*, SSA Office of Disability Adjudication and Review (“SSA Backlog 08 Report”).

substituted as the claims proceed following the deaths of their loved ones.³ Foreclosures have increased with claimants losing their homes and vehicles.

PERSISTENT UNDER-FUNDING OF SSA Despite Increased Workloads

In recent years, SSA's workload has increased dramatically due to an increase in the number of retirement and disability claims and addition of new SSA responsibilities. During the 5-year period from FY 2004 to FY 2008, retirement and survivors applications grew by 22 percent and Social Security disability claims grew 7 percent.⁴ During the same period, applications for SSI disability/blindness grew by 11 percent and SSI aged applications grew by 77 percent.⁵ Additional duties have been imposed on SSA, including implementation of new Medicare programs and verification for employment eligibility.⁶

Even though workloads increased from FY 2004 through FY 2008, SSA's staffing level decreased by 4 percent.⁷ SSA's staffing level is currently about 61,000 Full Time Equivalents (FTE's) the lowest level since the early 1970's.⁸ Moreover, many SSA employees have already taken early retirement and many more are eligible to retire.⁹ SSA could soon be deprived of its most experienced and knowledgeable employees.

Despite the increase in workloads, SSA's administrative expenses (known as LAE—Limitation on Administrative Expenses) have, until recently, been persistently under-funded.¹⁰ Every year from 1998 through 2007, the President's Budget requested less than the Commissioner's requested budget, and Congress appropriated even less than the President's request.¹¹ Between FY 2000 and 2007 alone, the resulting administrative shortfall was more than \$4 billion. The dramatic increase in the disability claims backlog coincides with this period of under-funding the agency, leaving people with severe disabilities to wait years to receive the benefits to which they are entitled.

In 2008, the tide finally changed for the first time in a decade, when Congress appropriated \$148 million over the President's budget.¹² This additional amount allowed the agency to hire some new Administrative Law Judges (ALJs) and other staff. However, given the many years of under-funding and the need for a \$400 million annual increase just to keep up with fixed costs,¹³ additional funding is required to reduce and eliminate the backlog and to provide essential services to the public.

Building on the FY 2008 appropriation, three recent developments in funding for SSA's administrative expenses are encouraging:

- **Economic Stimulus legislation.** Pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA), SSA received \$500 million to handle the unexpected surge in both retirement and disability applications due to the economic downturn. SSA also received badly needed funds to replace its aged National Computer Center.
- **FY 2009 appropriation.** The FY 2009 omnibus appropriations bill, just enacted this month, provides SSA with more than \$700 million over the final FY 2008 appropriation. With this increase and the ARRA funding, SSA expects to hire 5,000 to 6,000 new employees.

³If a claimant dies while a claim is pending, the SSI rule for payment of past due benefits is very different—and far more limited—than the Title II rule. In an SSI case, the payment will be made in only two situations: (1) to a surviving spouse who was living with the claimant at the time of death or within six months of the death; or (2) to the parents of a minor child, if the child resided with the parents at the time of the child's death or within six months of the death. 42 U.S.C. § 1383(b)(1)(A) [Section 1631(b)(1)(A) of the Act]. In Title II, the Act provides rules for determining who may continue the claim, which includes: a surviving spouse; parents; children; and the legal representative of the estate. 42 U.S.C. § 404(d) [Section 202(d) of the Act]. Thus, if an adult SSI claimant (age 18 or older) dies before actually receiving the past due payment and if there is no surviving spouse, the claim dies with the claimant and no one is paid.

⁴*Social Security Administration: Workloads, Resources and Service Delivery*, p. 10, Kathleen Romig, Congressional Research Service, R40207, 2/6/09 (hereinafter CRS 2/6/09 Rpt), p. 3.

⁵*Id.* p. 4.

⁶*Id.* p. 6–8.

⁷*Id.* p. 11.

⁸*Id.* p. 11 and *SSA Major Strategic Accomplishments* FY 2008, p. 5.

⁹CRS 2/6/09 Rpt., p. 11.

¹⁰*Id.* See also OMB, Budget of the U.S. Government: Appendix, FY 1996–FY 2009; SSA Budget Justification FY 2002–FY 2009. *SSA Major Strategic Accomplishments*, FY 2008, p. 5.

¹¹CRS 2/6/09 Rpt, p. 10.

¹²*Id.* p. 9.

¹³*Id.* p. 10.

- **President's request for FY 2010.** President Obama's Budget Overview for FY 2010 provides \$11.6 billion in administrative expenses for SSA, a 10 percent increase over the FY 2009 appropriation.

These developments come at a critical moment because the economic downturn has led to an unexpected surge in benefit applications. The result has been an increase of 17 percent in retirement claims over one year ago (28 percent over two years) and a 10 percent increase in new disability claims through March 13 of this fiscal year. Pending initial disability claims are up 12.5 percent so far this year and hearings filed are up 9.5 percent, with numbers increasing as the recession deepens.

We urge support for the full \$11.6 billion FY 2010 appropriation for SSA's LAE. These increases will help SSA not only to significantly reduce the backlog, but also keep local offices open and better staffed, provide adequate telephone services to the public, and maintain the integrity of its programs by performing more continuing disability reviews and SSI redeterminations.

Performing Program Integrity Activities. The processing of continuing disability reviews (CDRs) and SSI redeterminations is necessary to protect program integrity and avert improper payments. Failure to conduct the full complement of these activities has adverse consequences for the federal budget and the deficit. According to SSA, every \$1 spent on CDRs yields \$10 in program savings, and every \$1 spent on SSI redeterminations yields \$7 in program savings.¹⁴ However, the number of reviews actually conducted is directly related to whether SSA receives the necessary funds.

President Obama's FY 2010 budget request includes \$759 million for SSA program integrity work. We support this request, but it is important to note that there is a tradeoff between program integrity efforts and efforts to reduce the disability backlog and process new claims, given the limited capacity of the state Disability Determination Services (DDSs). DDS workers are trying to keep up with the unexpected surge in applications due to the economic downturn, and some of the same DDS personnel process CDRs. An increase in staff attention to one function is likely to result in decreased performance in the other, which could lead to more delays in the processing of new claims.

IMPACT OF UNDER-FUNDING ON SSA FIELD OFFICES AND THE STATE DDSs

SSA field offices. In addition to concerns regarding the disability claims backlog, SSA field offices are experiencing significant increases in the volume of their work and service difficulties. A recent Government Accountability Office (GAO) study found that the number of field office staff fell 4.4 percent from FY 2005 to 2008.¹⁵ GAO found that at least 51 percent of customers calling field offices had at least one previously unanswered call, and in FY 2007, over one million customers waited for over an hour to be served.¹⁶

State DDSs. The state Disability Determination Services (DDSs), which determine whether a claimant is disabled, experienced a 7 percent increase in disability applications for the last quarter of 2008, compared to the last quarter of 2007.¹⁷ Yet during the 5 year period from FY 2004 through FY 2008, the number of DDS staff declined by 8 percent.¹⁸ To make the problem worse, even though DDS salaries, offices and overhead are fully funded by SSA, due to severe state budget problems, some states are imposing hiring restrictions and furloughs of employees including DDS workers.¹⁹ Commissioner Astrue has written to Governors asking them to exempt DDS from these hiring freezes and furloughs—which exacerbate staffing shortages and severely affect the processing of disability claims.²⁰

¹⁴ CRS 2/6/09 Rpt, p. 23 and 24.

¹⁵ SSA *Service Delivery Plan Needed to Address Baby Boom Retirement Challenges*, Government Accountability Office Report GAO-09-24, January 2009, p. 2 and 3 (hereinafter "GAO 1/09 Report").

¹⁶ *Id.*

¹⁷ NADE, Statement for the Record Regarding Possible and Previously Imposed Furloughs of DDS State & Consideration of the Potential Impact of Hiring Freezes on DDS Services, 1/15/09 ("NADE Stmt 1/15/09")

¹⁸ CRS 2/6/09 Rpt, p. 13.

¹⁹ NADE Stmt 1/15/09. Some or all DDS employees have been furloughed in California, Massachusetts, Maryland and Oregon. Hiring freezing are affecting DDSs in Indiana, Maine, Washington and Wisconsin. Florida is considering a pay cut.

²⁰ Commissioner Astrue Asks Governors to Exempt State DDS Employees from Hiring Restrictions, SSA Press Release 2/3/09.

THE HEARING LEVEL: PROCESSING TIMES HAVE REACHED INTOLERABLE LEVELS FOR CLAIMANTS

The most significant delays in SSA's disability determination process are at the hearing level. The average processing time for cases at the hearing level has increased dramatically since 2000, when the average time was 274 days.²¹ In the current fiscal year, SSA estimates that the average processing time for disability claims at the hearing level will be 506 days,²² or nearly 17 months. We appreciate the effort by SSA to reduce the processing time, but an average of 17 months—close to one and a half years—is still too long for individuals waiting for a hearing decision. In addition, the average processing times at the initial and reconsideration levels have grown over the last ten years by about 20 days at each level, with some cases taking much longer.²³

The current processing times in some hearing offices are striking, and much longer than the 506 days targeted by SSA in FY 2009. Through February 2009, SSA statistics for 149 hearing offices²⁴ indicate that the average processing time was 499 days. It is important to keep in mind that this is an “average” and that many claimants will wait longer. However, the average processing time at 61 offices—41 percent—was above the 499 day February 2009 national average, with 26 offices over 600 days and 7 offices over 700 days.

Hearing offices more than one month over the current national average include: Tampa, FL (532 days); Minneapolis, MN (536 days); Nashville, TN (547 days); Los Angeles, CA—West (554 days); Bronx, NY (590 days); Milwaukee, WI (594 days); Birmingham, AL (614 days); Detroit, MI (643 days); Columbus, OH (640 days); Atlanta, GA—North (668 days); Miami, FL (674 days); and Oak Park, MI (714 days).

Other hearing office statistics reflect the lengthy waits that claimants must face. The “average age of pending” cases at nearly one-third of the offices is above the national average of 313 days, with wide variation. Perhaps even more disturbing is the extremely large disparity in the average caseload of ALJs—currently ranging from around 300 to 1442 cases per ALJ, with an average of 670.

Is the Hearing Backlog Improving? The number of pending cases has increased dramatically since 1999, reaching an all-time record high of 768,540 cases in December 2008. Through February 2009, the number dropped slightly to 765,527, but has not dropped below 760,000 since June 2008. In a recent report, the Government Accountability Office (GAO) noted that the hearing level backlog was “almost eliminated” from FY 1997 to FY 1999, but then grew “unabated” by FY 2006.²⁵ The number of pending cases at the hearing level reached a low in FY 1999 at 311,958 cases.

We remain concerned about the impact of the current economic downturn on the backlog. The number of hearing requests has increased 9.5 percent during the first 5 months of FY 2009, compared to the same period in FY 2008. This hearing level increase does not yet reflect the additional and unexpected 9.6 percent increase this year in the number of initial applications over the same period last year. As a result, we can expect to see an additional surge of hearing requests when the new application cases, attributable to the recession, reach the hearing level.

The impact of staffing on the hearing backlog. Over the last decade, concurrent with the marked increase in the disability claims backlog, we have noted the loss of ALJs and support staff in hearing offices around the country. Former Commissioner Barnhart had planned to hire an additional 100 ALJs in FY 2006 but due to cuts in the President's budget request, she was able to hire only 43. The real impact of the burden on the current ALJ corps can be seen by comparing statistics from 1998 and 2006. In FY 1998, there were 1,087 ALJs available to conduct hearings. This number dropped to 1,018 in FY 2006, while the number of pending cases more than doubled.²⁶

SSA received funding in FY 2008 to hire approximately 190 new Administrative Law Judges and some additional support staff. However, productivity is not related solely to the number of ALJs, but also to the number of support staff. According to the GAO: “By the close of fiscal year 2006, SSA saw the highest level of back-

²¹ *Social Security Disability: Better Planning, Management, and Evaluation Could Help Address Backlogs*, GAO-08-40 (Dec. 2007) (“GAO 12/07 Report”), p. 22.

²² *Social Security Administration: Fiscal Year 2009 Justification of Estimates for Appropriations Committees* (“SSA FY 09 Budget Justification”), p. 6. Available at: <http://www.ssa.gov/budget/2009cjapp.pdf>.

²³ GAO 12/07 Report, p. 20.

²⁴ “National Ranking Report by Average Processing Time” (Hearing Offices) for the Month Ending February 27, 2009.

²⁵ GAO 12/07 Report, p. 20.

²⁶ GAO 12/07 Report, p. 31.

logged claims and the lowest ratio of support staff over this period [FY 1997 to FY 2006].”²⁷ While SSA senior managers and ALJs recommend a staffing ratio of 5.25,²⁸ in 2006, the ratio of support staff to ALJs was 4.12. The actual ratio represented nearly a 25 percent decrease from the recommended level, at a time when the number of pending cases had increased dramatically. When the support staff to ALJ ratio was higher (FY 1999 to FY 2001),²⁹ the number of pending cases older than 270 days was much lower.

IMPROVING THE DISABILITY CLAIMS PROCESS AND ELIMINATING THE BACKLOG

Money alone will not solve SSA’s crisis in meeting its responsibilities. Commissioner Astrue is committed to finding new ways to work better and more efficiently. CCD has numerous suggestions for improving the disability claims process for people with disabilities. We believe that these recommendations and agency initiatives, which overall are not controversial and which we generally support, can go a long way towards reducing, and eventually eliminating, the disability claims backlog.

Caution Regarding the Search for Efficiencies

While we generally support the goal of achieving increased efficiency throughout the adjudicatory process, we caution that limits must be placed on the goal of administrative efficiency for efficiency’s sake alone. The purposes of the Social Security and SSI programs are to provide cash benefits to those who need them and have earned them and who meet the eligibility criteria. While there may be ways to improve the decision-making process from the perspective of the adjudicators, the critical measure for assessing initiatives for achieving administrative efficiencies must be how they affect the very claimants and beneficiaries for whom the system exists.

People who find they cannot work at a sustained and substantial level are faced with a myriad of personal, family, and financial circumstances that will have an impact on how well or efficiently they can maneuver the complex system for determining eligibility. Many claimants will not be successful in addressing all of SSA’s requirements for proving eligibility until they reach a point where they request the assistance of an experienced representative. Many face educational barriers and/or significant barriers inherent in the disability itself that prevent them from understanding their role in the adjudicatory process and from efficiently and effectively assisting in gathering evidence. Still others are faced with having no “medical home” to call upon for assistance in submitting evidence, given their lack of health insurance over the course of many years. Many are experiencing extreme hardship from the loss of earned income, often living through the break-up of their family and/or becoming homeless, with few resources—financial, emotional, or otherwise—to rely upon. Still others experience all of the above limits on their abilities to participate effectively in the process.

Proposals for increasing administrative efficiencies must bend to the realities of claimants’ lives and accept that people face innumerable obstacles at the time they apply for disability benefits and beyond. SSA must continue, and improve, its established role in ensuring that a claim is fully developed before a decision is made and must ensure that its rules reflect this administrative responsibility.

Technological Improvements

Commissioner Astrue has made a strong commitment to improve and expand the technology used in the disability determination process. CCD generally supports these efforts to improve the disability claims process, so long as they do not infringe on claimants’ rights. Some of the technological improvements that we believe can help reduce the backlog include the following:

- 1. The electronic disability folder.** The initiative to process disability claims electronically has the prospect of significantly reducing delays caused by

²⁷ GAO 12/07 Report, p. 32.

²⁸ *Id.*

²⁹ *Id.* In a recent report, the SSA Office of Inspector General (OIG) found that ALJs with higher disposition levels were more likely to be in hearing offices with staffing ratios above the FY 2007 national average of 4.46 staff members per ALJ. The OIG found that hearing offices ranked in the top half for productivity were “much more likely to exceed the national average staff ratio than hearing offices ranked in the lower half for productivity.”³⁰ The quality and composition of staff also must be considered. As the OIG points out: “[A]n office may have an ideal staff ratio, but if it does not have enough writers to prepare decisions or if the writers do not prepare quality decisions, the hearing office’s productivity may be impacted negatively.”³¹ This concern may account for the February 2009 statistics that show a mounting number of pending cases for decision writers, about 9,000 more pending cases waiting for a decision than one year ago, despite a significant increase in the number of decision writers.

the moving and handing-off of folders, allowing for immediate access by different components of SSA or the DDS, and preventing misfiled evidence.

2. Expanding Internet access for representatives. Electronic Records Express (ERE) is an SSA initiative to increase the use of electronic options for submitting records to the electronic folder for disability claims. Registered claimant representatives are able to submit evidence electronically through an SSA secure website or to a dedicated fax number, using a unique barcode assigned to the claim. While this initiative holds great promise, significant problems with the current process exist. Under the current process, representatives are to be provided with a CD of the exhibited or “pulled” file shortly before the hearing and earlier in the process after the appeal has been filed. Due to staffing shortages in hearing offices, representatives have frequently had problems obtaining the CDs and often find that all of the medical records they have submitted are not part of the exhibited list of evidence used at the hearing. This can cause significant delay both during and after the hearing.

We hope that these problems will be resolved in the near future. A group of representatives is involved in an SSA pilot that allows them to download the contents of electronic folders through the ERE website. Once SSA resolves security and authentication issues, we hope that the agency will begin to rollout this initiative. It should make the hearing process more efficient for all parties involved.

3. Use of video hearings. Video hearings allow ALJs to conduct hearings without being at the same geographical site as the claimant and representative and have the potential to reduce processing times and increase productivity. We support the use of video teleconference hearings so long as the right to a full and fair hearing is adequately protected; the quality of video teleconference hearings is assured; and the claimant retains the absolute right to have an in-person hearing as provided under current regulations.³² However, we have received complaints from representatives that, in some cases, ALJs are discouraging claimants from exercising their right to an in-person hearing. A new SSA pilot allows representatives to participate in video hearings from their own private offices, with their clients present in the representative’s office. The representative must agree to the terms established by SSA. This pilot provides claimants with another option for their hearings.

Other Improvements at the Hearing Level

1. The Senior Attorney Program. This program allows senior staff attorneys in hearing offices to issue fully favorable decisions in cases that can be decided without a hearing (i.e. “on the record”). We are pleased that Commissioner Astrue decided to authorize the program for at least the next two years.³³ In FY 2008, senior attorneys decided 24,575 cases. Through February 2009, the program is on pace to exceed last year’s total, with 13,462 cases decided through the first five months of this fiscal year.³⁴

2. Informal remands to DDSs. Under this initiative, SSA screens pending hearing level cases according to a profile and remands the cases to the DDSs for possible favorable decisions. In FY 2008, hearing offices remanded more than 50,000 cases and the DDSs reversed their prior decisions and allowed 16,838 cases, about 32 percent of the remanded cases,³⁵ with the remainder returned to hearing offices for a hearing and decision. Claimants do not lose their place in the queue if the remanded case is sent back to the hearing office. When the FY 2008 informal remand allowances are combined with the senior attorney allowances, more than 41,400 claimants received favorable decisions—and the benefits to which they are entitled—in a more timely way.

Generally, we support this initiative. However, the procedures used by DDSs have not been uniform and vary from state to state, with some representatives reporting that they are not notified that a remand has taken place so that they can assist with development of evidence.

³⁰ *Congressional Response Report: Administrative Law Judge and Hearing Office Performance*, No. A-07-08-28094 (Aug. 2008) (“OIG 8/08 Report”) (available at: www.ssa.gov/oig/ADOBEPDF/A-07-08-28094.pdf). This report was requested by the previous Chairman of the Social Security Subcommittee, Rep. Michael McNulty, and by Ranking Member Sam Johnson.

³¹ *OIG 8/08 Report*, p. 6.

³² 20 C.F.R. §§ 404.936 and 416.1436.

³³ The interim final rule reinstating the program was published in August 2007 and became effective on October 9, 2007. 72 Fed. Reg. 44763 (Aug. 9, 2007). The final rule was published at 73 Fed. Reg. 11349 (Mar. 3, 2008).

³⁴ “National Caseload Analysis Report: ODAR Workload and Performance Summary for the

3. Findings Integrated Templates (FIT). FIT is used for ALJ decisions and integrates the ALJ's findings of fact into the body of the decision. While the FIT does not dictate the ultimate decision, it requires the ALJ to follow a series of templates to support the ultimate decision. Representatives can use the FIT template, which is available on the SSA website, to draft proposed favorable decisions. Many representatives are now using the template either when requested by the ALJ or on their own initiative. When the draft proposed decision is submitted to the ALJ, it can lead to a speedier decision.

4. Increase time for hearing notice. We have previously recommended that the time for providing advance notice of the hearing date be increased from the current 20 days to 75 days. This increase will allow more time to obtain medical evidence before the hearing. The 75-day time period has been in effect in SSA's Region I states since August 2006³⁶ and, based on reports from representatives, has worked well.

Improvements at the Initial Levels

CCD supports initiatives to improve the process at the initial levels so that the correct decision can be made at the earliest point possible and unnecessary appeals can be avoided. Improvements at the front end of the process can have a significant beneficial impact on preventing the backlog and delays later in the appeals process.

1. New Screening Initiatives. We support SSA's efforts to accelerate decisions and develop new mechanisms for expedited eligibility throughout the application and review process. We encourage the use of ongoing screening as claimants obtain more documentation to support their applications. However, SSA must work to ensure that there is no negative inference when a claim is not selected by the screening tool or allowed at that initial evaluation. There are two initiatives that hold promise:

- **Quick Disability Determinations.** We have supported the Quick Disability Determination (QDD) process since it first began in SSA Region I states in August 2006 and was expanded nationwide by Commissioner Astrue in September 2007.³⁷ The QDD process has the potential of providing a prompt disability decision to those claimants who are the most severely disabled. Since its inception, the vast majority of QDD cases have been decided favorably in less than 20 days.
- **Compassionate Allowances.** In July 2007, SSA published an Advance Notice of Proposed Rulemaking (ANPRM) on a proposed new screening mechanism to be known as Compassionate Allowances.³⁸ SSA is "investigating methods of making 'compassionate allowances' by quickly identifying individuals with obvious disabilities." While there is no definition of disabilities that are considered "obvious," there is emphasis on creating "an extensive list of impairments that we [SSA] can allow quickly with minimal objective medical evidence that is based on clinical signs or laboratory findings or a combination of both. . . ." SSA has published an initial list of 50 conditions on its website, with more to be added at a later date. Unlike the QDD screening, which occurs only when an application is filed, screening for compassionate allowances can occur at any level of the administrative appeals process.

2. Improve development of evidence earlier in the process. In previous testimony, CCD has made a number of recommendations to ensure that disability claims are properly developed at the beginning of the process. Claimants' representatives are often able to provide evidence that we believe could have been obtained by the DDSs earlier in the process. Our recommendations include:

- **Provide more assistance to claimants at the application level.** At the beginning of the process, SSA should explain to the claimant what evidence is important and necessary. SSA should also provide applicants with more help completing the application, particularly in light of electronic filings, so that all impairments and sources of information are identified, including non-physician and other professional sources.
- **DDSs need to obtain necessary and relevant evidence.** Representatives often are able to obtain better medical information because they use letters and forms that ask questions relevant to the disability determination process. However, DDS forms usually ask for general medical information (diagnoses, findings, etc.) without tailoring questions to the Social Security disability standard.

³⁶ 20 C.F.R. § 405.315(a).

³⁷ 20 C.F.R. §§ 404.1619 and 416.1019.

³⁸ 72 Fed. Reg. 41649 (July 31, 2007).

SSA should review its own forms and set standards for state-specific forms to ensure higher quality.

- **Increase reimbursement rates for providers.** To improve provider response to requests for records, appropriate reimbursement rates for medical records and reports need to be established. Appropriate rates should also be paid for consultative examinations and for medical experts.
- **Provide better explanations to medical providers.** SSA and DDSs should provide better explanations to all providers, in particular to physician and non-physician treating sources, about the disability standard and ask for evidence relevant to the standard.
- **Provide more training and guidance to adjudicators.** Many reversals at the appeals levels are due to earlier erroneous application of existing SSA policy. Additional training should be provided on important evaluation rules such as: weighing medical evidence, including treating source opinions; the role of non-physician evidence;³⁹ the evaluation of mental impairments, pain, and other subjective symptoms; the evaluation of childhood disability; and the use of the Social Security Rulings.
- **Improve the quality of consultative examinations.** Steps should be taken to improve the quality of the consultative examination (CE) process. There are far too many reports of inappropriate referrals, short perfunctory examinations, and examinations conducted in languages other than the applicant's.

ADDITIONAL RECOMMENDATIONS

In addition to addressing the backlog and SSA's funding issues, there are several other legislative proposals that the Subcommittee may be considering this year.

- **Protecting claimants' privacy rights.** We understand that it can be cumbersome for SSA to obtain medical records, as it is for claimants and their representatives, and that SSA is exploring more efficient ways to secure the necessary evidence. While we support ways to make this process more efficient, we believe that claimants' privacy rights must be protected. We will work with SSA to find a way to obtain, as efficiently as possible, a claimant's authorization for release of medical records to SSA, while protecting the individual's privacy rights.
- **Extension of the fee demonstrations in the SSPA.** Access to experienced and qualified representatives through the lengthy and complex application process is critically important to claimants. To this end, we support allowing claimants to enter into voluntary agreements with representatives for fee withholding and direct payment procedures whether under Title II or Title XVI. The Social Security Protection Act of 2004 (SSPA), P.L.108-203, established two demonstration projects that we believe should be made permanent because they have proven to be effective in increasing claimants' access to effective representation: (1) Extension of the Title II attorney fee withholding and direct payment procedures to claims under Title XVI (SSI); and (2) Allowing non-attorney representatives to qualify for fee withholding and direct payment provided they meet certain requirements. Unless they are extended or made permanent, the demonstrations will sunset March 1, 2010.
- **Increase and indexing of the fee cap.** Rep. John Lewis has introduced H. R. 1093, which contains two provisions regarding the current \$5,300 fee agreement fee cap: (1) Increase the current fee cap to \$6,264.50 (which represents the figure if it had been adjusted for inflation since the last increase in 2002); and (2) Index the fee cap for future years to the annual COLA. We support these changes since they ensure that there will be a knowledgeable, experienced pool of representatives available to represent claimants.
- **Work incentives.** The Ticket to Work and Work Incentives Improvement Act (TWWIAA) was enacted nearly ten years ago and is overdue for evaluation of its effectiveness in employment of those receiving Title II and XVI disability benefits. We urge renewal and permanent extension of expired/expiring provisions including (1) SSA's Title II demonstration authority to test promising approaches for work incentives and related provisions; (2) Demonstration to Maintain Independence, set to expire this year, to provide Medicaid buy-in coverage to working individuals whose conditions or disabilities are not yet severe enough to qualify them for disability benefits; (3) Protection and Advocacy for

³⁹This evidence is often given little or no weight even though SSA's regulations provide that once an impairment is medically established, all types of probative evidence, e.g., medical, non-physician medical, or lay evidence, will be considered to determine the severity of the limitations imposed by the impairment(s).

Beneficiaries of Social Security, set to expire this year, to protect the rights of beneficiaries as they attempt to return to work; and (4) Work Incentives Planning Assistance, set to expire this year, which provides state grants for outreach and education to individuals with disabilities about supports and services regarding employment.

- **Caution about e-Verify.** E-Verify is an automated system for employers to verify the name/SSN/citizenship/work authorization of new hires by checking against SSA and Department of Homeland Security databases. SSA's workload has expanded rapidly due to demand by employers and new state laws mandating requiring use of this system.⁴⁰ The problem is that the e-Verify system is hampered by inaccuracies in the DHS and SSA records. Mandating large numbers of employers to use it would require in an unknown but substantial number of U.S. citizens and legal immigrants to interact with SSA to verify their employment eligibility status and provide documents to prove that they are eligible to work. The additional burden of this labor-intensive work could divert resources from SSA's core duties including making disability determinations within a reasonable time. It is essential that any proposal that would increase the use of e-Verify should only be enacted if it fully funds the resulting increased administrative burden on SSA and if the databases are accurate regarding employment.
- **Staffing shortages cause serious post-entitlement problems for beneficiaries.** When beneficiaries faithfully notify SSA of earnings or other changes that may reduce their benefit payment amounts, due to staffing shortages⁴¹ it may be months or years before SSA sends an overpayment notice to the beneficiary, demanding repayment of sometimes tens of thousands of dollars of accrued overpayments. It is shocking to beneficiaries to receive these notices, when they reasonably assumed that SSA had processed the information they submitted, and it is challenging if not impossible for someone subsisting on benefits alone to repay the overpayments. It would be helpful for SSA to develop a better reporting and recording system and promptly adjust benefit payments—thus preventing these overpayments. It is important to note that, in and of themselves, overpayments do not indicate fraud or abuse as beneficiaries are encouraged to work if they are able. The problems arise when reported earnings are not properly recorded and monthly overpayments are not properly adjusted.

CLAIMANT STORIES PROVIDED BY REPRESENTATIVES IN MARCH 2009

FLORIDA

- Mr. O was a 53 year old Wal-Mart cashier in Bradenton, Florida. He developed HIV in the mid 1980s, and continued to work until 2006 when his condition deteriorated and he was diagnosed with AIDS. He filed his application for Title II and SSI disability benefits soon thereafter in early 2006. While waiting for his hearing, he suffered a brain aneurysm and died in 2008. An estate was opened and the estate representative was substituted on the disability claim. The ALJ denied the request for an on-the-record decision, despite the numerous medical reports documenting that Mr. O's condition clearly met the impairment listing for HIV. In the meantime, the autopsy report showed that the brain aneurysm was most likely caused by Mr. O's deterioration due to AIDS and its complications. They are still waiting for a hearing date.
- Mr. M is a 57 year old man who worked as a Vocational Rehabilitation Specialist for over 20 years in Florida. He developed severe arthritis throughout his body, wears bilateral hand splints, knee splints, has developed severe joint degeneration, spinal cord degeneration, is agoraphobic, depressed, and anxious. He cannot take care of himself and he has no family to help him. He is about to lose his home. Mr. M has exhausted his savings and his attorney writes monthly letters to his mortgage company asking for extensions on his payments while he is waiting for his hearing. Nevertheless, the company is about to foreclose on his home.

GEORGIA

- Mr. C lives in Kennesaw, GA. Despite having only a 9th grade education, he has worked all of his adult life. He had back surgery many years ago, but continued working. His back pain became worse and worse until he was unable to work. He has degenerative disc disease throughout his back and herniated discs, some of which press on nerve roots, and depression. As a result of his

⁴⁰ GAO 1/09 Report, p. 10.

⁴¹ GAO 1/09 Report. P. 10–12

back disorders, he has severe back pain, which radiates down into his legs. He must walk with a cane and can only obtain relief with narcotic medications. Mr. C filed for a hearing in November 2006 and a request for an on-the-record decision was filed by his attorney. Despite numerous attempts to follow-up with the hearing office, no decision has been reached and no hearing has been scheduled, 27 months after the hearing request was filed. Not only is Mr. C's condition adversely affected by this great delay, but he is unable to support his children.

- Mr. D lives in Doraville, GA. He was diagnosed with chronic hepatitis C with cirrhosis. He continued working, but became increasingly symptomatic with severe fatigue, bone pain, and numbness and tingling in his legs and feet. He also has severe depression and anxiety. As early as June 2007, his doctor stated Mr. C was suffering from very advanced and terminal hepatitis C. Mr. C is now bed-ridden and must depend on his girlfriend for all of his support. Mr. C filed an application for Social Security and SSI disability benefits in March 2007. The claim was denied and a request for a hearing was filed in October 2007. Mr. D's attorney filed a request for an on-the-record decision as a TERA (terminal) case. Despite numerous follow-ups to the hearing office, the only response has been to transfer his case to the National Hearing Center. To date, no hearing has been scheduled.

IOWA

- Mr. H lives in southeast Iowa and has been diagnosed with multiple sclerosis. He has a number of lesions in his brain, has difficulty walking, and suffers from debilitating fatigue. He has not been able to work since July 2007, and his claim has been pending since September 2007. He sent a letter to his attorney, which states:

To Whom It May Concern: I am writing this brief letter to tell you about a few of the examples of what this disease has caused. Besides the day to day struggle just to live it has caused my wife and me, along with our 2 children, financial ruin. My mortgage payment is as much as my wife makes. I receive no other income and worry day to day how to exist. As far as what this has done to my state of mind, I am finding it impossible to keep fighting this and feel like giving up. As bad as this may sound, I have actually tried to end this with a suicide attempt in November 2008. There isn't any way to describe this except to say it feels hopeless and wonder if there's any hope.

MARYLAND

- Mr. X, is a 57 year old Army veteran. Once his claim was allowed, he still had to wait for 120 days to get his retroactive benefits of \$50,000. Each time he called the local SSA field office in Prince Georges County, Maryland, he was told there was "nothing we can do." On one occasion, they told him "do not call any more." Meanwhile, the veteran was forced to file for Chapter 13 bankruptcy, and almost lost his home. It took 16 months from the reconsideration denial to the hearing decision.
- Ms. Y is 50 years old and only speaks Spanish. She waited 90 days to receive her past due benefits and had considerable problems with the field office, which could not find a Spanish interpreter. As a result, there was marked confusion about the SSI offset against the Title II benefits, and she could not obtain a Medicare card. Ms. Y is indigent and homeless and she is currently living with a relative. She is in dire need of medical services. From reconsideration to hearing, it took about 20 months.
- Ms. F is a 43 year old Army veteran. Her case has been pending since 2006. Her hearing was just held but no decision has been issued. She filed for Chapter 13 bankruptcy. She is in dire need of medical care and desperately needs Medicare eligibility. She is now homeless.

MISSOURI

- Mr. D, from the Trenton, MO, area, was diagnosed with multiple sclerosis. His truck was repossessed and his home was threatened with foreclosure. The local chapter of the MS Society advanced him six months of house payments to save the home. His hearing was scheduled but then delayed for two months, even as an "expedited hearing" because the vocational expert's copy of the electronic record on a CD was corrupted when he received it so he could not prepare to testify for the original hearing date. Eventually, Mr. D received a favorable decision and was able to keep his home.

- Mr. M, in his mid-40s, committed suicide because of his inability to afford medical care and take care of his family while waiting for a hearing. He had suffered horrible burns while pouring asphalt on his former job.
- Ms. N died while waiting for her hearing. Her attorney had attempted on three occasions to get an on-the-record decision but received no response from the hearing office. Ms. N died from medical complications related to her disabling conditions. At her death, she was virtually homeless, living in dilapidated travel trailer. Tragically, both her child and husband also died while she was waiting for a hearing.

NEW JERSEY

- Ms. W. lives in Newark, NJ. She previously worked as a counselor, laboratory technician, and outreach coordinator for various medical facilities. She has been diagnosed with major depression, anxiety disorder, and post-traumatic stress disorder. She applied for Social Security disability benefits in December 2007. She was denied through the reconsideration level (11 months after she applied) and requested a hearing in December 2008. Ms. W. has been sued for foreclosure and cannot afford her mortgage. If she were approved for benefits, she could afford to stay in her house, but it is not clear that she will have her hearing before it is too late and she loses her home.
- Ms. L, a resident of New Jersey, is a 57 year old former junior college instructor who has long-standing problems with arthritis and depression. Her case has been pending for over three years from the date the application was filed. As a result, she has been forced to take out home equity loans of more than \$70,000 against her home. She can no longer borrow against her home as she has no visible means of repaying her obligations. She has borrowed from every friend or family member she knows in order to make payments on her loans. Currently, she has a payment plan for \$400 per month that she is unlikely to be able to meet. She can no longer afford to see doctors or pay for her medications. Her case has been pending at the hearing level for ten months. Her attorney has asked that the case be expedited in light of her imminent homelessness and he is hopeful that will happen. If it is not expedited, she could wait an additional six months. She calls her attorney every week and cries.
- While waiting for her hearing, a woman in the Atlantic City, NJ area almost lost her apartment because of non-payment of rent. She had such severe mental problems that her attorney knew that if the client was forced to relocate to a smaller apartment, without her belongings, the client's mental health would deteriorate further. The attorney has tried to keep the client in her apartment while waiting for a hearing, which was requested in August 2007. The hearing was not held until February 2009, and they are waiting for a decision.

OHIO

- Mr. N is a 55 year old former maintenance supervisor who lives in Chillicothe, OH. He has small vessel ischemia, cerebrovascular disease, lumbar scoliosis, degenerative joint disease, vision loss, migraine headaches, depression, anxiety, fatigue, memory loss, and partial paralysis to his left side caused from two strokes. Mr. N filed his request for hearing in September 2007. While waiting for a hearing, he has had five liens put on his home, and does not have medical insurance to receive the medical treatment that he needs. His primary care physician has discussed his treatment options and has explained that his health will continue to decline, and that it is crucial for him to receive treatment as soon as possible.
- Ms. L was a 60 year old woman with a 12th grade education whose past work included kitchen helper and clothing folder. She lived in Eaton, OH, and suffered from pain and loss of range of motion due to a 2004 fractured right shoulder and right knee, with three unsuccessful surgeries which prevented her from working. Ms. L filed an application for Social Security disability benefits on June 15, 2006, alleging onset of disability in 2004 when she suffered the fractures. She developed rectal cancer in late 2006, and died on October 29, 2007, at the age of 60. A hearing was held with a substituted party on January 8, 2009, 14 months after her death, at which time she was found disabled as of the 2004 date through the date of her death.
- Mr. W, a 37 year old fork lift driver from Columbus, OH, has a head injury and bipolar disorder, which prevent him from working. He filed his application for disability benefits in November 2006. While waiting for a hearing, he and his family were evicted from their apartment and his wife left him. He is living in a house with a friend and is unable to pay rent. However, when he is awarded

benefits, he will owe back payment for the rent and continues to fall further into debt.

- Mr. P, a 60 year old data entry person who lived in Columbus, OH, had back and knee problems, epilepsy, and number of infections that kept occurring throughout his body. He filed his application for disability benefits on April 25, 2006. While waiting for a hearing, Mr. P became increasingly ill due to infection and chronic lymphedema. He died on December 11, 2007. An on-the-record favorable decision was made on October 9, 2008, ten months after his death. Mr. P was found disabled as of May 1, 2002 (four years before he applied for benefits) through the date of his death.
- A 57-year old quality-control inspector in Ohio with severe macular degeneration and uncontrolled high blood pressure applied for disability benefits in February 2008. He has exhausted all of his savings and, out of desperation, had to take in a boarder, but that income is not enough to keep the heat and lights on. His attorney filed his request for a hearing in November 2008, and told him to be prepared for an 18 to 24 month wait in the Cleveland, OH area, unless the ALJ issues an on-the-record decision or there is an informal remand to the DDS.
- Mr. S, who lives in the Cleveland, OH area, has peripheral vascular disease and severe arthritis in his right shoulder requiring surgery. While waiting 27 months for his hearing, he lived with various relatives, including his ex-wife and mother. Without any source of funds to purchase prescriptions, he used the \$25 jury duty pay, after being called for jury duty. This allowed him to afford the \$5 co-pay on his prescriptions at the county hospital where they have a sliding scale. A fully favorable bench decision was issued by the ALJ on the day of his hearing.
- Ms. T, from the Cleveland, OH area, waited 29 months for her hearing. She has been diagnosed with borderline intellectual functioning and epilepsy. While waiting for a hearing, she exhausted her time limit for TANF benefits and nearly lost her home. Her mother used her own income tax refund to save it from foreclosure, and then tried to make small payments on the utilities so that Ms. S and her children, aged 5 and 7, would have lights and heat.
- Mr. C, a 48 year old men's clothing salesman from the Cleveland, OH area, struggled for years with severe rheumatoid arthritis. He had undergone one hip replacement and needed another. When his savings ran out while trying to afford COBRA premiums, he would regularly call his attorney to help him. He applied for benefits in April 2007. He was fortunate enough to win "quickly" at the reconsideration stage, 13 months later, but it was too late to save his house, which he lost to foreclosure.
- Mr. A, a factory worker, lives in the Cleveland, OH area and is 46 years old. He had returned to work for 10 years after a rare but successful kidney/pancreas transplant. But finally, he applied for disability benefits because his gout and joint pain, requiring multiple knee and shoulder surgeries, plus weakness after a mild stroke, became too much for him to bear. His wife was diagnosed with cancer herself while his case was pending and she could no longer work or take care of him. Thanks to an expedited hearing, he won his case 19 months after he applied in August 2007.
- Mr. G is a 34 year old graphite factory worker with severe mental illness and Hepatitis C. He calls his attorney frequently to let her know that he is at the mental health crisis center again or staying with someone he met there. He was evicted last summer and has no regular place to live. His attorney worries that he may harm himself out of sheer desperation. His attorney filed a request for hearing in October 2008, but must continually tell him that he must steel himself for what could be the full 18 to 24 month wait that the Cleveland hearing office warns about in its notice.
- Ms. C is a 50 year old cook who tried to hold onto her part-time job at a tavern, but even the 10 hours per week got to be too much. Her back, leg and bladder problems finally led the owner to let her to go. She was so ashamed that she cried when she resorted to asking the local probate court for a loan against the funds being held for her son (based on a court settlement years ago). She did this in desperation because she did not know how else to hold onto her house. Her 16 year old son agreed that the court should allow her to access the funds, because he could not bear to see his mother under the stress. Ms. C was eventually allowed disability benefits and she repaid the money right away after she received her past due benefits.
- Mr. F is a 35 year old factory worker with borderline intellectual functioning. He worked for years as a laborer, then stayed home with his children while his wife went to school. He fell off a ladder while trying to clean out his father's

gutters and shattered his heel, requiring surgery. He now has an MRI showing multiple fractured vertebrae, probably also a result of the fall a year and a half ago. The family has already lost their house. When his attorney filed the request for hearing last summer and told him it could be another year or two before his hearing, he and his wife and their three small children were sleeping in a tent in his parents' backyard. They hoped that when the weather got too cold, they would be able to move into the living room to sleep on the floor at night.

OKLAHOMA

- Mr. L lived in Norman, OK, and obtained representation in April 2008, upon receiving the initial denial of his Social Security disability claim. His attorney immediately requested reconsideration. His attorney explained to him that it most likely would be at least two to three months before he would receive a decision on the request for reconsideration; that most reconsideration requests result in another denial; and, if denied on reconsideration, it would be about one year before a hearing would be scheduled. The attorney obtained and submitted additional hospital records of the claimant's emergency treatment for acute exacerbation of asthma which occasionally required intubation.

A mere two weeks after the appeal was filed, Mr. L's claim was denied at reconsideration in May 2008. Upon learning of the denial, the claimant committed suicide. His surviving spouse has been substituted and they are presently awaiting a hearing on the request for hearing that was filed in June 2008. In late February 2009, the hearing office notified Mr. L's attorney that the claim was "ready for review." The attorney responded that all evidence has been submitted and that the claim should be scheduled for a hearing. To date, no hearing has been scheduled. The individual's medical records do not reflect treatment for any mental disorders.

OREGON

- An attorney in Eugene, OR, received a call in 2006 from Mr. E who lived in a rural Oregon town and was chronically mentally ill. He had heard from a social worker that the attorney coordinated a federally funded project called HOPE that helped chronically homeless disabled people apply for benefits. (Unfortunately, this project ended in 2008 and has not been re-funded.) He had been living outdoors for at least 10 years. He heard voices that told him to do bad things, including stealing from stores, which lead to multiple terms of incarceration. He also was in terrible physical pain. The attorney arranged transportation to her office and assisted him in filing for SSI disability benefits. His claim was denied at the initial and reconsideration levels because of a lack of evidence. Meanwhile, Mr. E spent another winter in the snow and rain, in terrible pain. He finally had a date set for hearing but a few days before his hearing, his stomach hurt so much that his brother persuaded Mr. E to go to the emergency room. He was diagnosed with end-stage pancreatic cancer. He brought a letter to the ALJ from the emergency room doctor verifying that he had less than 6 months to live. The ALJ immediately approved the claim without a hearing, but the claimant died three days later, before he ever received a check.

PENNSYLVANIA

- Mr. D lives in Dalmatia, PA. He is a veteran of the Vietnam War and is a victim of Agent Orange and has other war-related health and mental problems. He had obtained a favorable decision on his Social Security disability claim. However, because of a mix-up at SSA, it was nearly two years until his attorney was able to straighten out his payments. He has a son with the same name and the SSA system had the two individuals mixed in with each other. While waiting for his payments, Mr. D's house went up for a Sheriff's sale, after foreclosure. Two days before the sale, he called his attorney, crying, and said that he had no more reason to live. Out of sheer desperation, they called Rep. John Kanjorski's office, which was able to help get the Sheriff's sale postponed. Further, within two weeks, someone at SSA was trying to straighten out the mix-up. Within two months, the payments started. Mr. D's attorney notes that he does not believe this would have been accomplished if Rep. Kanjorski's office had not intervened.
- Mr. W lives in Wilkes-Barre, PA, and is waiting for an expedited hearing. He has Stage III colon cancer, yet his disability benefits claim was denied. He is undergoing infusion therapy at home. He called his attorney to say that he has no money to pay his rent and does not know where he will be living next month. Despite repeated requests for an expedited hearing, no hearing is scheduled.

- A little girl from Plymouth, PA, was the victim of sexual abuse at the age of 2 and was left with both mental and physical problems that will stay with her for her entire life. She cannot function in school due to anger issues and fear of men. She has had to undergo surgery for injuries related to the sexual abuse and will probably have additional surgeries throughout her life. Her parents applied, on her behalf, for childhood SSI disability benefits. They received a favorable decision, but it took nearly 17 months.
- Ms. L is 50 years old and lives in Pennsylvania. She has been diagnosed with cirrhosis of the liver caused by Hepatitis C. Although she has finally received a hearing date, the wait has been a struggle for her. She has had her utilities shut off, her car repossessed, and her health has worsened. Ms. L's medical care is very costly. She has been non-responsive to certain treatments for her cirrhosis and is now on the liver transplant list.

SOUTH CAROLINA

- Ms. S was 38 year old woman who had uncontrolled diabetes. Ms. S lived in her sister's home with her own two teenage children. She did not qualify for Medicaid under South Carolina guidelines because she had not yet been found disabled by SSA. Since she had no treating physician, every time her blood sugar went too high or too low, her sister took her to the local emergency room (ER) where she was given treatment. She continually complained to the ER staff that she had a sore on her right foot that would not heal. No one evaluated her for this because they were concerned with getting her blood sugar under control. Every ER visit had notations of her unhealing sores but provided no treatment.

Eventually, the unhealing sores on her right foot got so bad that one night at the ER, she and her sister insisted that the doctor look at her foot. Once the doctor saw her foot, she was immediately admitted and the next day her leg was amputated below the knee. However, the surgeon who amputated her leg stated he could not remove all of the leg that needed to be removed as it would be too much of a shock to her system and he wanted to wait until the following week. The sores were so bad that even with the amputation, osteomyelitis had set in and before the surgeon could perform the next amputation, Ms. S died. The cause of death on the Death Certificate said "Complications of Diabetes".

Records for every ER visit to that hospital and other hospitals were submitted for consideration to the ALJ. By the time the case was set for hearing, Ms. S's sister was the substituted party. By the time all the Exhibits were labeled, there were 52 ER visits and 14 inpatient visits in 18 months. Yet no on-the-record decision was granted even though it was requested. At the hearing, Ms. S's sister described the pain and agony her deceased sister had gone through. At the hearing, the ALJ stated it was obvious that Ms. S had been disabled as of her alleged onset date and he issued a fully favorable decision. However, there were no family members who could receive the past due benefits. As a result, the family had to find the money for Ms. S's funeral costs. Neither the hospitals nor the surgeon will be paid for their services, because there was no Medicaid coverage due to no SSI benefits being paid.

The hearing delay led to a lack of medical care for Ms. S under the Medicaid program (based on SSI eligibility), which most likely would have saved Ms. S's life.

- Mr. C was 42 years old client with a long history of coronary artery disease and morbid obesity. It took 22 months to get a hearing and by the time the hearing took place, Mr. C had died from a massive heart attack. Mr. C's mother was substituted. Mr. C's representative provided records at the hearing level from 15 ER visits where Mr. C had been taken, unconscious, by ambulance. In addition, the attorney provided over 30 ER and inpatient admissions for coronary artery disease with chest pain, shortness of breath, and the inability of the medical staff to find pulses in various parts of Mr. C's body. Mr. C was prescribed 7 cardiac medications for hypertension, chest pain, and hypercholesterolemia. At the ALJ hearing, his mother testified there were other ER visits that her son had forgotten to mention to anyone, including the attorney, because he could not keep track of all of them. One of the reasons for this memory problem was that his hypertension caused such severe headaches that sometimes he simply forgot that his family or emergency services had taken him to the ER. Despite all of this evidence and Mr. C's cause of death, the ALJ denied the claim. The ALJ denial has been appealed to the Appeals Council.
- Mr. O has been waiting 19 months for a hearing in South Carolina. He has a multitude of orthopedic problems as well as post-traumatic stress disorder. Six months ago, Mr. O was bitten by a brown recluse spider and was admitted to

the local hospital for 8 days where he was put on IV antibiotics and then told to follow up with his regular treating physician. [These spiders have a powerful poison in their bite which can cause necrosis of soft tissue and more serious symptoms.] Mr. O has no money or insurance and is not eligible for Medicaid. Because he cannot obtain medical care, including antibiotics, Mr. O has been trying to take care of the wound himself. It is getting worse and he has been told that if he does obtain antibiotic treatment soon, he will lose his entire left leg as the infected wound is only inches from his left hip. If his hearing had been held sooner, he could have obtained the treatment he needed for the bite and he could have received treatment for his orthopedic problems and possibly returned to work.

TENNESSEE

- A 50 year old man who lives in Alamo, TN, has non-alcoholic steatohepatitis, advanced hepatic fibrosis, cirrhosis (end stage liver disease), esophagus varices, chronic obstructive pulmonary disease, and myeloproliferative disease. He lost his TennCare insurance in November 2008. He is not able to obtain his needed medication or seek the proper medical treatment needed to monitor his impairments. He was also recently diagnosed with four bulging discs that are impinging on nerves. He filed his application for disability benefits on February 13, 2007, and his attorney requested a hearing on May 28, 2008. His attorney anticipates that this client will have to wait until the end of 2009 or early 2010 before his ALJ hearing.
- A 47 year old woman who lives in Milan, TN, is now in a wheelchair because she is unable to obtain the medical testing to determine what is wrong with her knees. The biggest roadblock to the necessary testing is that she has no medical insurance. She filed for disability benefits in February 2007 and a hearing was requested in February 2008. This is an extremely long period of time between the application date and the hearing request date. In this case, her attorney requested reconsideration (the first administrative appeal) in June 2007. However, the paperwork was lost. When her attorney's office called to check the status in October 2007, there was no record that the reconsideration request was filed. This caused an additional four months of delay.
- Mrs. J., from Camden, TN, applied for widow's disability benefits in October 2007, when she was 50 years old. She has chronic obstructive pulmonary disorder (COPD). Before the loss of health insurance, she was able to have oxygen at home. At her husband's death, she had no income, no health insurance, no car, and no telephone. She lived far away from her treating source, the Carroll County (TN) Health Department. Mrs. J. was denied at reconsideration in June 2008 and filed a request for an ALJ hearing the same month. In November 2008, during a very cold period, she had no heat and a neighbor gave her a wood stove. However, she put her health at even more risk as her former lung specialist did not want her to be around wood smoke, but Mrs. J had no choice. She also had no gas money for a trip to the health department. Her attorney requested an on-the-record decision, which was granted, and the ALJ issued a favorable decision in January 2009.
- Mrs. B. lives in Dyersburg, TN. She stays with an alcoholic, abusive husband because she has little choice for alternative housing. She obtained representation in November 2006. She had a hearing in February 2007. The ALJ denied the claim and she appealed in March 2007. The Appeals Council remanded the case for a new hearing more than 18 months later in October 2008. Her attorney called the hearing office about the status of the new hearing in February 2009. The hearing office claimed it did not know about the remand order. Her attorney immediately faxed the order to the hearing office. Since then, her attorney has called the hearing office and left two messages to confirm receipt of the remand order but no one has returned the calls.
- Mr. T. is homeless. Relatives and friends in the Dyersburg, TN, area allow him to occasionally stay with them. He obtained representation for his disability claim in May, 2005. He formerly lived in another state and a hearing request was pending in a third state. His attorney was able to request a transfer but the claims file was mistakenly sent to the Selmer, TN SSA field office and was eventually forwarded to the Memphis hearing office. His first hearing was held in October 2005 and denied in December 2005. He filed an appeal to the Appeals Council in December 2005 and the Appeals Council issued a remand order in August 2006. The remand hearing was scheduled to be held in Memphis, some 90 miles from where Mr. T is living. He had great difficulty collecting money for transportation to the hearing. The remand hearing was held in August 2007 and denied once again. Mr. T appealed to the Appeals Council for

a second time in September 2007. He is still waiting for a decision from the Appeals Council, 18 months later.

- Mrs. X, a 43 year old radiology/CT scan tech, lives in Clarksville, TN. She is unable to work due to diabetes, depression, anxiety disorder, fluid and arthritis in her knees, spondylothesis, spinal stenosis, degenerative disc disease, broad based disc bulges and severe pain and weakness in both legs. She filed her application for disability benefits in June 2007. While waiting for her hearing, Mrs. X and her family have been evicted from their home. Both of their vehicles have been repossessed, and they are having extreme difficulties paying for their day to day living. Her husband is on the verge of being laid off and, if that happens, there will be no income at all for this family. Due to the backlog, this claimant and her family may lose everything before she is able to get a hearing date and decision.
- Ms. A is 61 years old and lives in Milan, TN. She has Major Depressive Disorder, which prevents her from working. She filed her application for benefits in 2007. Ms. A's hearing has not yet been scheduled but her attorney has requested an on-the-record decision. She and her husband, who is currently employed, were forced to file for Chapter 7 bankruptcy in order to keep their house. The majority of her husband's check is going to the bankruptcy trustee each pay period, leaving them with only \$4 to \$27 per pay period for all of their other expenses, such as groceries and utilities.
- Mr. C was a 57 year old man who lived in Big Sandy, TN. He was diagnosed with hypertension and renal dysfunction. His application for benefits was filed in 2006; however, before a hearing could be scheduled, Mr. C died in June 2007. His widow was substituted as the party and was able to obtain a favorable decision without a hearing, but not until August 2008. It took over six months for the payment center to process the claim and release the funds to Mr. C's widow.
- Mr. S is 36 years old and lives in Madison County, TN. He has musculoskeletal impairments and obesity, which prevent him from working. He filed his application for benefits in 2007 and was approved in late 2008, after his attorney requested an on-the-record decision. However, while his claim was pending, he lost his home, his wife left him, and his mother has taken him in.
- Mr. D, a 48 year old man who lives in Gibson County, TN, has musculoskeletal impairments. He filed his application for disability benefits in 2007. Mr. D's hearing has not yet been scheduled. He has lost his home and his wife left him. He is essentially homeless, living with various family members and friends.
- Mr. W is 53 years old and currently lives in Haywood County, TN. He has been diagnosed with musculoskeletal impairments. He filed his application for disability benefits in late 2004. It was denied and he had to appeal the case to federal district court. The court remanded the case, but not until mid to late 2008. After a remand hearing in 2009, his claim was allowed. However, while waiting for the decision, he lost his home and has had to live with various family members.
- Ms. M, a 58-year old woman who lives in Dyer County, TN, has musculoskeletal and mental impairments. She initially filed her application for benefits in 2004. A hearing was held in September 2005; however, a decision was not issued until January 2007. The decision was unfavorable and was appealed to the Appeals Council in February 2007. More than two years later after the appeal was filed, and five years after the application was filed, the Appeals Council has not yet made a decision on Ms. M's claim. She is essentially homeless, living with friends or family members.

TEXAS

- Mr. A is 45 years old and lives with his wife in Mission, TX. He has degenerative disc disease of the lumbar spine status post lumbar laminectomy, major depressive disorder, and borderline intellectual functioning, which prevent him from working. He filed his application in September 2003. The claim was denied initially in November 2003 and at reconsideration in February 2004 and he requested a hearing a few days later. While waiting for a hearing, Mr. A's house burned down in November 2004. His hearing was finally held in June 2006, more than two years after he filed his appeal. The hearing was continued in order to obtain a psychological consultative examination and a supplemental hearing was held in July 2007. The ALJ denied the claim and on appeal, the Appeals Council remanded the case back to the ALJ. During this period, Mr. A was forced to file for bankruptcy. He had a remand hearing in February 2009 before the same ALJ who previously denied his case. At the remand hearing, the ALJ announced he would be awarding a fully favorable decision, but Mr. A has not yet received the decision.

- Mr. R is 48 years old and lives in San Antonio, TX. He has back pain, joint pain, hearing problems, Hepatitis C, and a head injury, which prevent him from working. He filed his application for benefits in January 2007. While waiting for a hearing, he became homeless and cannot receive proper medical attention. Mr. R has to rely on the kindness of friends for his basic necessities.

WEST VIRGINIA

- Ms. M is 42 years old from West Virginia. She has several conditions that prevent her from working. She has been diagnosed with bipolar disorder, and neck and back problems. She filed her application for benefits in the winter of 2007. She struggles daily with worsening of her health and financial needs. Her medical care is costly. She has tried to work several times but is currently on assistance. She has lost her home while waiting for a hearing.

* * * * *

Thank you for the opportunity to testify today. For people with disabilities, it is critical that SSA be given enough funding to make disability decisions in a timely manner, improve its process for making disability determinations, and carry out its other mandated workloads.

We also support changes to improve the disability claims process so long as those changes do not affect the fairness of the procedures used to determine disability and the rights of claimants.

ON BEHALF OF:

American Association of People with Disabilities	National Council on Independent Living
American Council of the Blind	National Disability Rights Network
Association of University Centers on Disabilities	National Health Care for the Homeless Council
Bazelon Center for Mental Health Law	National Law Center on Homelessness & Poverty
Community AIDS National Network (THICANN)	National Multiple Sclerosis Society
Easter Seals	National Organization of Social Security Claimants' Representatives
Epilepsy Foundation	NISH
National Alliance on Mental Illness	Paralyzed Veterans of America
National Association of Disability Representatives	The Arc of the United States
National Council for Community Behavioral Healthcare	United Cerebral Palsy
	United Spinal Association

Chairman TANNER. Thank you, Ms. Hathaway.

Your testimony reminds me of what I said at the beginning, that they are real people. It is just not numbers. So thank you for being here.

Next is the Honorable Ron Bernoski.

Well, we will go to Mr. Fell then.

Mr. Fell, you are recognized.

STATEMENT OF JAMES FELL, IMMEDIATE PAST PRESIDENT, CHAPTER 275, OFFICE OF DISABILITY ADJUDICATION AND REVIEW, FEDERAL MANAGERS ASSOCIATION.

Mr. FELL. Thank you, Chairman Tanner, Chairman McDermott, and Ranking Members Johnson and Linder.

My name is Jim Fell. I am here today representing managers in the Social Security Administration's Office of Disability Adjudica-

tion Review in my current role as Immediate Past President of the Federal Managers Association Chapter 275.

Currently I serve as the Hearing Office Director in the Cincinnati, Ohio, ODAR office and recently accomplished 38 years of Federal service, 35 with SSA. Please keep in mind that I am here on my own time and my own volition representing the reviews of FMA, and I do not speak for SSA.

Within ODAR, there are over 765,000 pending requests for a hearing, an increase of almost 5,000 cases since the beginning of the fiscal year. Much of the increase in cases this year can be attributed to the current economic slowdown. It now takes an average of 499 days to process a request for hearing. As managers within ODAR, we are acutely aware of the impact this backlog has on our ability to deliver the level of service the American public deserves.

I appeared before the Subcommittee just 2 years ago, and I am here once again to reconfirm that the backlog of cases is the result of the ongoing lack of adequate staffing levels and resources. The underfunding of the agency by Congress over the last decade has worsened the situation. Several years of untimely budgets further compound the problem. If these delays and inadequacies continue, clearing the disability case backlog will be impossible.

We at FMA appreciate the attention the Subcommittees and Commissioner Astrue are placing on addressing remedies to the problem. In my written testimony, I discuss the Commissioner's four-pronged approach to eliminating the backlog. As mentioned, there are over 765,000 cases pending. In February, administrative law judges averaged 2.2 dispositions per day. With 250 work days in a year and 1,142 judges in SSA, ODAR could reasonably dispose of 628,000 cases in a year. This is not an unrealistic figure. However, it only allows us to work on the incoming cases, but it has little impact on the backlog. It is clear that ALJs will not meet this level if they do not have the staff to prepare the cases and write the decisions.

Another troubling problem is the vast imbalances from region to region. Average pending cases per ALJ range from a low of 477 in the Dallas region to a high of 903 in Seattle. Five regions average over 700 pending cases per ALJ. Individual offices range from a low of 288 pending cases to a high of 1,442, and nine offices exceed 1,000 cases per ALJ.

It is our experience that distribution of judges and staff is often based on physical space and not an office's caseload. We must find an efficient way too better balance and redistribute the work if we are serious about tackling the backlog.

Ultimately, this is a numbers game. None of the Commissioner's initiatives, whether alone or combined, is the silver bullet that will eliminate the backlog. We either have to slow the cases coming from the front end, which would require significant legislative changes, or we have to increase the capacity at the back end. The challenge is yours.

To enable SSA to meet its goals, Congress must approve a sufficient level of funding. In the decade prior to fiscal year 2008, Congress appropriated far less than the President requested each year.

Without a doubt, this has had a devastating effect on the services provided to the American public.

Recognizing the needs of SSA, Congress appropriated \$126 million above the President's fiscal year 2009 request. Unfortunately, we operated under a continuing resolution for the first 6 months of the year, and as a result, ODAR endured hiring, budget and overtime limitations. Continuing resolutions have become the norm rather than the exception, and it is significantly hindering our ability to get the job done. In order for funds to be properly spent, budgets must be implemented by October 1st. Not doing so ties the hands of an already beleaguered organization.

To remedy the backlog situation, Congress should at a minimum pass President Obama's 2010 budget request of \$11.6 billion before the start of the fiscal year. This is a 10-percent increase over the current fiscal year. We applaud the President for his commitment to eliminating the backlog problem and urge Congress to appropriate his request.

I would like to close my statement with a personal story. In my office, about 5 feet from where I sit, I have a fax machine which I call the congressional fax. It is dedicated to the congressional staff, your staffs, for your constituents. Every day I receive inquiries, most of which are critical in nature and dire in need. I review heart-wrenching letters about homes being lost, crucial medications being skipped because they can't be afforded, college funds which are depleted, and overall despair. They do not understand why it takes years to receive a hearing.

With your help, I would like to have no further use for this fax machine. Thank you for your time and consideration of our views, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Fell follows:]

Statement of James Fell, Hearing Office Director, Social Security Administration Office of Disability Adjudication and Review, Cincinnati, Ohio; and Immediate Past President of the Federal Managers Association Chapter 275

Chairman Tanner, Chairman McDermott, Ranking Member Johnson, Ranking Member Linder and Members of the House Ways and Means Subcommittees on Social Security and Income Security and Family Support:

My name is Jim Fell and I am here today representing nearly 800 managers in the Social Security Administration's Office of Disability Adjudication and Review (ODAR) in my current role as Vice President of the Federal Managers Association (FMA) Chapter 275 and Vice Chairman of FMA's Social Security Conference. Please allow me to take a moment and thank you for this opportunity to present our views before your Subcommittees. As federal managers, we are committed to carrying out the mission of our agency in the most efficient and cost effective manner while providing necessary services to millions of Americans.

Currently I serve as the Hearing Office Director in the Cincinnati, Ohio, Office of Disability Adjudication and Review and recently accomplished 38 years of federal service, 35 of which were with SSA. I have been in SSA management for 29 years, the first 12 in SSA Operations in district field offices and the last 17 in ODAR, first as a hearing office manager and now as a Hearing Office Director. I was also an active member of the Hearing Process Improvement (HPI) Steering Committee created by former Commissioner Kenneth S. Apfel to study the effectiveness of HPI. I have held the positions of President and Vice President of FMA Chapter 275, Office of Disability Adjudication and Review Managers Association (ODARMA) for the past 15 years. Please keep in mind that I am here on my own time and of my own volition representing the views of FMA and do not speak on behalf of SSA.

Established in 1913, the Federal Managers Association is the largest and oldest association of managers and supervisors in the Federal Government. FMA was originally organized to represent the interests of civil service managers and super-

visors in the Department of Defense and has since branched out to include some 35 different federal departments and agencies including managers and supervisors within the Social Security Administration. We are a nonprofit, professional, membership-based organization dedicated to advocating excellence in public service and committed to ensuring an efficient and effective Federal Government. As the ODAR Managers Association within FMA, our members and their colleagues are responsible for ensuring the successful administration of the Social Security Administration's disability determination process and providing needed services to American customers.

As you are keenly aware, the Social Security Administration plays a vital role in serving over 160 million American workers and their families. Each month, SSA pays out benefits to 48 million beneficiaries, including over seven million low-income Americans who depend on the agency's Supplemental Security Income program to stay afloat in a cost-inflating world and nearly 7.2 million disabled Americans who receive benefit payments through Social Security Disability Insurance. These programs amount to the agency paying out nearly \$650 billion in benefits per year. At a February 28, 2008, hearing before the House Appropriations Committee, Commissioner Astrue testified that SSA's productivity had increased over 15 percent since fiscal year 2001. Considering the magnitude of its mission, the Social Security Administration does a remarkable job administering critical programs.

In the Office of Disability Adjudication and Review, however, there are 765,527 pending requests for a hearing, an increase of 4,714 cases since the beginning of the fiscal year. It now takes an average of 499 days to process a typical request for a hearing and these delays continue to tarnish SSA's otherwise strong record of service to the American public. At the beginning of 2002, SSA had 468,262 pending hearing requests. In seven years, that number increased to over 765,000, despite the fact that dispositions are at record levels. The files simply awaiting preparation for review by an Administrative Law Judge (ALJ) at the close of February 2009 totaled 456,442 cases, an increase of 25,173 cases since the beginning of the fiscal year.

As managers and supervisors within ODAR, we are acutely aware of the impact these backlogs are having on our ability to deliver the level of service the American public deserves. I appeared before the Social Security Subcommittee just two years ago and I am here once again to confirm what you've heard several times before—the ongoing lack of adequate staffing levels and resources have directly contributed to the backlog. The lack of resources can be directly contributed to the underfunding of the agency by Congress over the last decade. Several years of untimely budgets further compound the problem. If these delays and inadequacies continue, clearing the disability case backlog will be impossible and service delivery will continue to deteriorate.

BACKGROUND

By way of background, when a request for a hearing is received at a local Social Security office, it is automatically propagated into our computer system by a case intake employee in ODAR who adds ODAR-specific coding such as ALJ assignment, site of the hearing and the representative involved. Basic screening is done to ensure timeliness of filing, verify procedural issues are met and determine the need for critical or expeditious handling. An acknowledgement is prepared and in some offices, a CD is burned and bar codes are prepared to send to the claimant or representative.

If staffing allows, ALJs or attorneys will screen the cases for anything that might qualify it as an "on the record" (OTR) decision. This allows for cases to be decided favorably and paid without a hearing based on the evidence in file. However, such cases are rare and if an OTR is not possible, the electronic record will await preparation for ALJ review. The national average for this period of inactivity is 164 days. In the Dallas region, a file will wait only 66 days on average, but in the Chicago Region, the wait averages 229 days. In all but 75 offices, the wait for folder preparations exceeds the national average. The files simply awaiting preparation for review by an Administrative Law Judge (ALJ) at the close of February 2009 totaled 431,269 cases, a decrease of 22,729 cases since the beginning of the fiscal year. We are encouraged by this decrease and the promise it holds. However, these delays will continue to exist simply due to the volume of work coming in and the lack of staff to tackle it.

The disproportion of workloads among the regions also continues to be a cause for concern and must be addressed. Significant efforts were made to address this situation within the last two years but without ongoing attention and fine tuning to make the best effort to balance resources and workload, these efforts will not yield the desired results. With the promised addition of staff, we will be able to begin to address these backlogs; however, once again, we are seeing staffing deci-

sions being made on the basis of where there is physical room to put the ALJs and employees rather than caseload. Continuing to make staffing decisions using these criteria only perpetuates the existing staff and workload imbalances.

Cases are generally worked in hearing request date order. Those cases deemed critical or in dire need may be given preference. The “workup” of the file involves a support person who reviews and orders the evidence, identifies each exhibit, obtains the jurisdictional documents and provides a brief summary of the evidence in file. Once the file is completed and the exhibit list is prepared, it is referred to an ALJ for review and scheduling instructions. It is then scheduled for a hearing based on the individual ALJ instructions. Scheduling requires coordinating the schedules of the ALJ, the claimant, the representative, medical and vocational experts, a reporter and hearing room availability. The claimant and representative must be given a Notice of Hearing at least twenty days in advance of the hearing. These hearings can be done in person or by video in the local hearing office, a permanent remote site or a temporary remote site, such as a hotel or local government office.

After the case is heard, the ALJ can make a decision or order supplemental records and a consultative examination if necessary. Once the ALJ has all the evidence and testimony needed to make a decision, he/she will write instructions for the decision writer. At the end of February, there were 32,270 cases nationally in which an ALJ had made a decision but was waiting for an attorney or paralegal to draft the decision. This number has been growing in part because the Senior Attorney Adjudicator’s availability to address decision writing is reduced by the time they spend on their adjudication responsibilities, such as review of existing claims and drafting of on the record decisions.

When the written decision is completed, it is made available for the ALJ to review, edit, return for redraft if necessary and electronically sign. After it is signed, an alert is sent to the support staff to print, mail and code the case to completion. It is my understanding that this mailing process will be shortly automated to send the decision to a central mailing site. Once the decision is mailed and the coding is complete, we have a disposition.

WHERE WE ARE TODAY

We at FMA appreciate the attention the Subcommittees and Commissioner Astrue are placing on examining the reasons for the backlog and addressing remedies to the problem. ODAR began fiscal year 2009 with 456,442 pending cases awaiting preparation for a hearing. Those cases will wait at least one year before any action is even initiated to prepare them for review and hearing in front of an Administrative Law Judge. In February, processing times across the nation ranged from a low of 346 days in the Boston region to a high of 616 days in the Chicago region. Once again, the large difference in regions is disconcerting. The American public deserves better service.

Within ODAR, production is measured by the number of dispositions completed per day by an Administrative Law Judge. In FY05 and FY06, this record-level figure was 2.2 dispositions per day per ALJ. In FY08, ALJs went even further by averaging 2.3 dispositions per day. Current performance through February is back in the 2.2 range and likely represents the best achievable level of production. This level of performance will allow ODAR to meet the 500 disposition per ALJ figure that was requested as a minimum by the Office of the Chief ALJ last October. At the end of February 2009, SSA employed 1,142 ALJs, which would allow us to dispose of 571,000 cases if each ALJ worked 500 cases. The problem with this production level is that it’s only good enough to handle the incoming work, not the backlog. For the current fiscal year through February, receipts totaled 256,831 (an increase of 22,219 during the same period last year), while ALJs completed 237,758 dispositions. As you can see, without significant increases in the number of ALJs and appropriate support staff levels, the best we can do is stay even, which means the number of pending hearing requests remains above 765,000.

Let’s take a closer look at the numbers. Five years ago, SSA leadership determined that a fully productive ALJ could produce a maximum of 2.5 dispositions per day, a number we have yet to achieve. With 250 work days, an ALJ should dispose of 625 cases in any given year. We currently employ 1,142 judges, which under this scenario would mean ODAR could dispose of 713,750 cases in a year. Even if ALJs produced only 2.2 dispositions per day, ODAR could dispose of 628,100 cases a year. The math is clear. Without holding ALJs to a stronger level of production and supply them with adequate staff to prepare cases, the backlog will never stop being a backlog.

We at FMA believe that it is imperative that both the agency and Congress recognize the reality of the ALJ production level. It is the key to the solution. By acknowledging what has been defined as acceptable and using it to compute the num-

ber of potential dispositions, we can accurately foresee where we can go in terms of working down the backlog. From there, we can compute what we need to achieve an appropriate pending case level. With an average disposition level of 2.2 per day, we will not be able to reduce the backlog without more judges and staff to support them.

In FY08, SSA hired 190 Administrative Law Judges, which could translate into an additional 94,500—132,300 dispositions if each ALJ issued 500—700 dispositions per year, as requested by the Chief ALJ. However, 68 judges retired during the same period. In FY09, SSA is planning to hire an additional 157 judges, but is projected to lose 60 to retirement. While this is certainly a step in the right direction, Administrative Law Judges alone will not solve the problem. Without additional staffing, the current level of prepared work would be distributed among more judges, essentially resulting in the same dispositional outcome. Without adequate support staff to prepare cases for the judges, both existing and new, we will not achieve an increase in hearing dispositions. In recent years, however, budgetary constraints have forced the agency to hire additional Administrative Law Judges without providing adequate support staff to prepare the cases for hearing. We recognize that the Commissioner is trying to address the backlog by adding these judges; however, additional ALJs without the supporting clerical staff to prepare cases in a timely manner will not solve the problem.

With the recent increase in funding for SSA from Congress, it is likely ODAR will be filling 400—500 staff positions. We are encouraged by this, but in order to maintain an adequate ALJ to staff ratio in each office, several hundred more staff will have to be hired. The Commissioner is publicly acknowledging the need for support staff and hiring authority is coming our way. Unfortunately, we are already half way through the fiscal year and training staff can take upwards of a year. As the first six months of FY09 were funded with a continuing resolution (CR), it is unlikely that we will see much impact from the current influx until FY10. The untimely passage of budgets is further tying our hands from getting the job done. While we are grateful Congress is beginning to recognize the needs of the agency, this feast or famine approach is hindering the agency's productivity.

As mentioned, adequate clerical support is necessary to prepare cases for hearing, as well as staff to write a disposition after the ALJ has made his/her decision. As it currently stands, hearing offices do not even have the staff to accommodate the current judges, let alone enough staff to accommodate the new judges and process the over 51,366 new cases the Office of Disability Adjudication and Review receives each month. If receipts remained flat, over 765,000 cases will remain pending, 36 percent of which are over 365 days old. At the beginning of FY09, ODAR had 166,838 cases that would reach 850 days by the close of FY09. As of March 12, ODAR had disposed of 100,833, or 61 percent, of the 850 day old cases. We are on target to complete the remaining cases by the end of the year and the Commissioner and staff should be commended on their dedication to tackling this portion of the backlog.

With the aging Baby Boom population, as well as the current economic downturn, it is reasonable to assume that receipts will continue to out-pace dispositions. In fact, ODAR received almost five percent more cases than anticipated in FY08 and ended the year with 14,069 more cases than at the close of FY07. Additionally, the first quarter of FY09 saw receipts higher than expected, mainly due to our ongoing economic challenges. When the economy slows, disability claims increase. As the requests for hearings continue to rise, more is demanded from ODAR staff on all levels. The *bottom line* is that the hearing offices lack sufficient staff to process the work on hand, much less even begin to work on new cases. It is evident that under the best case scenario, the current staffing levels in ODAR barely maintain the status quo. That means that the backlog stays the same and processing times continue at a rate which nears 500 days.

The accepted staff to ALJ ratio is roughly four and one half production staff per ALJ. However, this only ensures productivity necessary to handle *incoming* work, not the backlog. For offices with heavy backlogs, the four and one half to one standard is inadequate. Quality and composition of staff also impacts productivity. Additionally, management and administrative employees should not be included in these figures, as they are not the employees performing the production work on hearing requests. It is our experience that distribution of judges and staff is often based on physical space and not an office's caseload. This must be addressed if we are serious about tackling the backlog in the most efficient manner possible.

Average pending cases per ALJ range from a low of 477 in the Dallas region to a high of 903 in Seattle. Five regions average over 700 pending cases per ALJ. Individual offices range from a low of 288 pending cases to a high of 1,442 and nine offices exceed 1,000 cases per ALJ. On a national level, processing times range from

346 days in Boston to 616 in Chicago. At the end of February, 32,270 decisions have been made by the ALJs but are waiting to be drafted by a decision writer.

The solutions to the backlog problem start with timely budgets and adequate staffing levels which will allow us to address the pending cases. As of last month, just over 765,000 requests for a hearing were pending. However, it is worth noting that the agency can reasonably process 450,000—550,000 cases during a given fiscal year. As such, the actual “backlog” at this point is around 300,000 cases.

COMMISSIONER’S PLAN TO ELIMINATE THE BACKLOG OF HEARINGS

SSA has undertaken 37 initiatives to achieve each of the four aspects of Commissioner Astrue’s plan to eliminate the backlog. The Commissioner should be applauded for his commitment to delivering a level of service acceptable to the American public and as managers and supervisors in ODAR, we are dedicated to working with the Commissioner to reach his goals. A commitment from Congress is also necessary if we are to succeed in providing a level of service acceptable to the American people we serve.

Compassionate Allowances

The first point on the Commissioner’s plan is to accelerate the review of cases likely or certain to be approved, otherwise known as Compassionate Allowances. This concept has been introduced in a variety of iterations over the years. The idea is admirable; however, we expect that this will have little impact on ODAR’s pending cases, as many of these are issued at the initial and reconsideration levels.

Improve Hearing Office Performance

The Commissioner also laid out a number of initiatives designed to Improve Hearing Office Performance, the second of his four-pronged approach. As previously noted, there are 166,838 cases that will age to 850 days in FY09 and we are on track to tackle this unacceptable level of service by the close of this year. Additionally, giving adjudication powers to attorney advisors has the benefit of adding to dispositions; however, it redirects the work of these very skilled attorneys from reviewing and advising ALJs on the most difficult cases and makes them unavailable for decision writing. In many instances, these employees are not replaced with others to do their original tasks and those tasks go uncompleted or are redirected to others who are already overburdened. Improving Hearing Office Performance will never be achieved without additional staff.

Increase Adjudicative Capacity

The third aspect of the Commissioner’s plan is to Increase Adjudicative Capacity through Streamlined Folder Assembly, which has made additional folders available for hearings as evidenced by the 52,533 cases prepared using this method in fiscal year 2008. It has been expanded to the electronic folder, but this process was optional for ALJs and requires additional review time on their part because of the “rough” nature of the preparation.

The introduction of the National Hearing Center (NHC) has the potential to greatly expand the agency’s capacity to redirect the resources where the cases are. It is our understanding that installing video centers in heavily impacted parts of the country so that the claimant can go to a video center in order to have his/her case heard by the NHC or other Hearing Office via video is the goal. We believe the potential for delivery of service with this process is huge. However, we once again caution that in order to hear these cases, we still need staff to prepare, schedule and draft decisions. Without adequate staff support, the NHC will have no cases to hear. In FY08, the NHC received 4,650 cases, but was able to make decisions on only 2,151 of those cases. In order to even begin making a dent in the backlog, several thousand more cases will have to be heard at the NHC.

Along the same lines, additional video equipment has the potential to expand the number of video hearings. In fact, in some impacted areas, we understand that stand alone video sites are being built that will allow assistance to be provided from around the country. However, we must not forget that without adequate staff to prepare cases, additional electronic capacity is a moot point. Furthermore, regulations allow the claimants and their representatives to opt out of the process and our business process also allows the ALJs to opt out. The practice only works when you have parties that will use it.

Under this section of the Commissioner’s plan is an expectation in place regarding the productivity of ALJs. As mentioned earlier, a productive, trained ALJ should reasonably be able to dispose of 500—700 cases a year. Not surprisingly, ALJs conducted 14,733 more cases in FY08 than in FY07.

Increasing Efficiency with Automation and Business Processes

Increasing Efficiency with Automation and Business Processes is the final aspect of the Commissioner's plan. There are a large number of initiatives under this goal. The greatest percentage of case files are now in the electronic folder format. Increasing our electronic capabilities will allow us to balance workloads more efficiently. Although many cultural and training challenges remain, we believe this will ultimately provide for an efficient process. Acquiring new buildings and hiring and training staff simply take too long to have any immediate effect on the backlog. In fact, by the end of FY08, 655,457 cases were filed electronically representing 86 percent of ODAR's caseload.

Much of ODAR's initial promise of increased efficiency was tied to the success of the ePulling initiative; however, the pilot program did not prove successful. We have heard that there is a new iteration of this program that holds promise. Our ability to pull cases and serve the public may very well rest on this new program. However, ePulling is still very much a work in progress and we are unlikely to see any progress this fiscal year. Implementation of eScheduling would certainly free up additional individuals whose services could be used to complete other tasks, including folder preparation. Given the complicated nature of the scheduling process, which takes into account many schedules and many individual scheduling preferences, we believe this will be a difficult challenge.

The temporary service area realignments went a long way to adjusting some of the imbalances in the workloads. We believe that the electronic nature of our cases provides us with significant opportunities to expand this concept to individual work categories. Any office with excess writing or pulling capacity should have that capacity redirected to offices with significant backlogs. No office should be allowed to process their work in an average of under 300 days when there are 30 offices with processing times of around 400 days and 26 offices with processing times above 600 days. We must find an efficient way to better balance and redistribute the work.

The Electronic Records Express (ERE) initiative also has significant promise and a pilot project is currently underway. While representatives have the ability to submit records using this process, currently they do not have access to the files via a secure Web site. This requires the local office to provide CDs with the evidence and we believe results in significant duplicate submissions since they cannot confirm what evidence is on file.

Many reports are available to provide enhanced management information and management training has been improved. These initiatives are certainly supported by FMA, as management of the workload is enhanced by trained employees and adequate tools; however, the critical issue once again is the lack of adequate staff to actually do the work. We know what needs to be done; we simply do not have enough people to do it. Furthermore, management is not allowed to hold employees accountable for production standards, making ongoing performance measures a challenge.

Ultimately, this is a numbers game. Should Congress define what it considers to be an adequate level of service, we believe the agency can define what we need to get there. None of the initiatives outlined above, whether alone or combined, is the silver bullet that will eliminate the backlog. We either have to slow the cases from coming in at the front end, which would require significant changes in legislation, or we have to provide more capacity on the back end. The challenge is yours.

WHERE WE GO FROM HERE—INCREASED FUNDING

To enable SSA to meet the goals set forth in Commissioner Astrue's plan to eliminate the hearing backlog, Congress must approve a sufficient level of funding for the agency. Between 2001 and 2007, Congress appropriated, on average, \$150 million less than the President requested each year. The value of this differential is equivalent to processing an additional 177,000 initial claims and 454,000 hearings. In the ten years prior to fiscal year 2008, Congress appropriated nearly \$1.3 billion less than the President's request. Without a doubt, this has had a devastating effect on the services provided to the American public, as evidenced by the situation we are in today.

Recognizing the needs of SSA, Congress appropriated \$150 million above the President's request for FY08 in an effort to bring down the backlog. Congress should be applauded for their commitment to serving the American people in this capacity. In fact, it is this increase which allowed the agency to hire the additional 190 ALJs. Imagine what we could have accomplished with adequate staff to provide support to the additional ALJs.

Unfortunately, for the first six months of FY09, we operated under a continuing resolution (CR) and as a result, ODAR has had to endure hiring and overtime limitations. Continuing resolutions have become the norm rather than the exception and

it is significantly hindering our ability to get the job done. With the passage of the FY09 Omnibus Appropriations bill (P.L. 111-8), these restrictions have been lifted. The bill included \$126.5 million above President Bush's FY09 request, which was already six percent over the FY08 appropriation. This will allow the agency to go forward in hiring staff. However, hiring and training staff takes time and consequently, we will not see the benefits of this funding increase until FY10 has started. In order for funds to be properly spent, budgets must be implemented by October 1st every year. We simply can no longer afford to pass budgets halfway through the fiscal year, essentially tying the hands of our already beleaguered organization.

In addition to the increase in FY09 funding, the economic stimulus bill (P.L. 111-5) provided necessary and timely funds to SSA in order to improve its service delivery issues. It is crucial SSA allocate these funds to the areas that need them the most. Of the \$1 billion provided to SSA in the stimulus, it is estimated the agency will be able to hire 5,000—6,000 employees with \$500 million of the funds. The remaining \$500 million will replace the National Computer Center to ensure the new facility is functional prior to the time the current center is no longer operational. We encourage the agency to ensure the new hires are placed where the agency needs them the most—in field offices and as clericals in hearing offices.

In his first budget to Congress, President Obama requested \$11.6 billion for SSA's administrative expense in FY10. This is an increase of \$1.1 billion or ten percent over the current fiscal year. Without a doubt, these funds would have a direct impact on the service delivery of the agency. We applaud the President for his commitment to solving the backlog problem and urge Congress to appropriate his request.

To remedy the unprecedented backlog situation, Congress should *at a minimum* pass the President's 2010 budget request of \$11.6 billion for SSA's Limitation on Administrative Expenses account before the start of the fiscal year. Under his budget, the agency would be able to process tens of thousands of more hearings in FY10 than in FY09. It is estimated that forty percent of SSA's 65,000 member workforce will retire by 2014. In FY06 and FY07, SSA replaced one worker for every three that retired. The President's budget will allow for a 1 to 1 replacement ratio and maybe even some additional staff. While this will not allow us to eliminate the backlog immediately, we will be able to make significant strides to reducing it. We must reiterate that if we are forced to endure another CR, service delivery will suffer.

In addition to having an immediate impact on the current backlog, underfunding the Social Security Administration will negatively impact every service area of the agency. Staffing at SSA will soon reach its lowest level since 1972; however, SSA today has nearly twice the number of beneficiaries it had in 1972. Never has hiring sufficient staff been more crucial. Reversing this trend is a necessary step to reduce the backlog.

CONCLUSION

While the President's budget request for FY10 is a start, it is certainly not a cure all solution. Throwing money at the problem will not fully solve it without a well-trained, dedicated staff of federal employees willing to avert a crisis in the coming years. We believe this is the workforce we have now, strengthened under the leadership of former-Commissioner Barnhart and Commissioner Astrue. By fully funding the President's request, we can continue this tradition.

In this era of shrinking budgets, SSA has attempted to maximize its use of scarce resources to provide the best possible service to the American public. The challenges faced by the managers and supervisors are not short term; they are a demographic reality. The same citizens putting stress on the Social Security trust fund because they are approaching retirement are also entering their most disability-prone years. ODAR is struggling to handle the current workload and will be hard pressed to manage the anticipated increase in hearing requests without additional staff.

We are the men and women who work with disabled Americans everyday. We see people of all ages come in and out of our offices seeking the services they depend on for survival from the Social Security Administration. We are committed to serving a community of Americans in need, but we need you to provide us with the necessary resources to help them. Thank you for your time and consideration of our views and I am happy to answer any questions you may have.

Chairman TANNER. Thank you, Mr. Fell.
Judge Bernoski, you are recognized.

**STATEMENT OF THE HONORABLE RONALD G. BERNOSKI,
PRESIDENT, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES.**

Mr. BERNOSKI. Mr. Chairman, thank you for inviting us to testify here today.

As administrative law judges, we are keenly aware of the disability case backlog because we work with it on a daily basis. Administrative law judges continue to work hard at Social Security.

During the past decade, we have been rendering case dispositions on a record basis. In 2008, we issued dispositions in about 550,000 cases, which amounts to over 2 cases per day, per judge. The only agency study that we know of regarding ALJ production was part of a 1994 agency reform plan. This study concluded that a judge could efficiently produce about 25 to 55 cases a month. This would have the judge devoting between 3 to 7 hours to each case on an incremental basis. We don't believe that this is too much time for a case that is worth around \$250,000, including Medicare.

We have prepared a chart, which is part of our statement, which shows that our judges, our rendering case dispositions in a bell curve manner, with most of the judges of course being in the center of the chart. A second chart also shows that the more cases that a judge issues, the higher the pay rates become.

Now, these charts were based on information provided to a newspaper by the agency. This continued increase in case production has come in spite of the fact that the electronic files have slowed our work process and e-polling is showing signs of failure. E-polling is an electronic system to prepare our exhibit files for hearings, and it eliminates the need for the manual process.

The failure of this system proves our past comments to this Committee, that Social Security has a history of overselling benefits of technology. For example, last year the agency claimed that e-polling reduced the need for the five-to-one support staff ratio for judges. Instead, this failure now shows that we will continue to require this support staff ratio. In fact, at the last hearing before this Committee last year, evidence was introduced to support a six-to-one staff ratio for judges.

The GAO and the IG have both concluded that judges would decide more cases if the files were available for hearing. Despite this hard work by our judges and other employees of the agencies, we continue to fall behind, and the case backlog continues to grow.

If history remains consistent, the current economic recession will add to our backlog. The agency is in need of additional resources to address this problem. The resources are needed, as has been indicated, to hire additional administrative law judges and support staff.

Social Security hearings are based on an inquisitorial, rather than an adversarial, model. The judge is responsible for ensuring that the hearing record is complete and that both the claimant and the trust fund receive a fair hearing. This places more responsibility on the judge and the assistance of staff as necessary to allow judges to complete their work. We work as a team with our staff, and the support staff is needed to set up the file, send a notice of hearing, assist during the hearing, monitor post-hearing developments and prepare draft hearing decisions.

Now, in this time of tight budget, additional support staff could be obtained by closing the ODAR regional offices and assigning those workers to hearing offices to support the hearing process.

However, Mr. Chairman, money alone is not enough and substantive reform is also needed to improve the process. Cases that meet the standard for disability must be taken out of the system before they meet the administrative law judge hearing, before they get to that level. This change can be done by adopting a system like the Federal that was in the DSI program or by using our attorneys to achieve this result. Vocational rules could also be revised to reflect our increased longevity and our changing workplace.

The initiatives that the commissioner has implemented have had little impact on reducing the disability case backlog. Ideas such as the streamlined files, the National Hearing Center, centralized printing and mailing, and the electronic filing system have done little and, in many cases, have added to our workload and have increased the backlog.

Now, we have prepared a white paper with our recommendations for addressing the Social Security disability program, and we would offer into the record with the chairman's content. And——

Chairman TANNER. Without objection.

Mr. BERNOSKI. Thank you very much. And that concludes my statement.

[The prepared statement of Mr. Bernoski follows:]

Statement of The Honorable Ron Bernoski, Administrative Law Judge, Milwaukee, Wisconsin; and President, Association of Administrative Law Judges

Thank you for inviting us to testify at this hearing. My name is Ronald G. Bernoski. I am an administrative law judge (ALJ) who has been hearing Social Security Disability cases in Milwaukee, Wisconsin, for about 28 years. I also serve as President of the Association of Administrative Law Judges (AALJ), a position I have held for over a decade. AALJ represents the administrative law judges employed at the Social Security Administration (SSA) and some administrative law judges at the Department of Health and Human Services. One of the stated purposes of the AALJ is to promote and preserve full due process hearings in compliance with the Administrative Procedure Act for those individuals who seek adjudication of program entitlement disputes within the SSA and to promote judicial education for administrative law judges. The AALJ represents about 1100 of the approximately 1400 administrative law judges in the entire Federal Government.

The Association of Administrative Law Judges is most grateful for the oversight of the Social Security disability program provided by the Subcommittee. We too find it most painful that the American people, who are in the disability hearing process, have been disadvantaged by long delays in their cases.

History of Administrative Law Judges

The 1946 Administrative Procedure Act was enacted to protect, *inter alia*, the American public by giving administrative law judges decisional independence. "Congress intended to make hearing examiners (now administrative law judges) 'a special class of semi-independent subordinate hearing officers' by vesting control of their compensation, promotion and tenure in the Civil Service Commission (now the Office of Personnel Management) to a much greater extent than in the case of other federal employees". [*Ramspeck v. Federal Trial Examiners Conference*, 345 U.S. 931 (1953)]. The agencies employing them do not have the authority to withhold the powers vested in Federal administrative law judges by the Administrative Procedure Act.

The Roles of Administrative Law Judges and Support Staff in Hearing Offices

The Social Security Administration's adjudication system is in the Office of Disability Adjudication and Review (ODAR), formerly the Office of Hearings and Appeals (OHA). It is one of the largest adjudication systems in the world.

Since much of the disability problem involves staff shortages it is critical that members of Congress understand the role of staff in the disability claims process. When case files arrive in a hearing office, they must be “worked up” or “pulled”, that is prepared for use in the hearing. This is a significant task requiring skill and one to three hours of time. The task is done only by *Senior Case Technicians*. Whether the claim is a paper file or electronic file, the contents arrive in random sequence, unidentified, unpaginated, with duplications and without any numbered exhibits or table of contents to locate the exhibits. The Senior Case Technician identifies and eliminates duplications, identifies exhibits from the same source, labels them, arranges them in chronological order, numbers and paginates the exhibits and prepares the List of Exhibits. After it is worked up, the file goes to the assigned judge for review.

The judge reviews all the evidence in the file, an average of around 400 pages, and many of the administrative pages, then requests the staff obtain such additional medical evidence as may be needed. When fully developed the judge then needs to determine whether a favorable decision can be made on the record presented, without a hearing. In most cases a hearing is required and the judge then determines what expert witnesses will be required for the hearing. After this review, the staff secures the expert witnesses and schedules the case for hearing. Once the hearing is scheduled, the judge continues to be involved with the case to review newly submitted evidence, to consider and resolve prehearing motions and issues. Typically, a day or two before the hearing, the judge will conduct another review of the file to insure familiarity with the facts and issues for the hearing. When the hearing is concluded the judge must prepare thorough decisional instructions for the writing staff, review and edit the draft decision and sign the decision.

In courts and other agencies, trials and adjudications are conducted under the adversarial process. Under this system the case is developed during trial by evidence introduced by opposing counsel. The judge studies and reviews the evidence as the trial progresses. However, in Social Security disability hearings, administrative law judges preside over an inquisitorial process, in which it is the duty of the judge to develop the facts and develop the arguments both for and against granting benefits. This is in large part required because the Social Security Administration is not represented at the hearing. Therefore, Social Security judges are required to wear the so-called three hats (to protect the interest of the claimant, of the trust fund and to render a decision based on the evidence in the hearing record). Nearly all the evidence is gathered and entered into the record before the hearing begins. After reviewing the evidence, the judge often sees a need for additional evidence which must be obtained. The inquisitorial system relies more on the administrative law judge and places more responsibility on the judge. Hearings based on this model are more time consuming and labor intensive for the judge.

Need for Large Additions to Support Staff

SSA has the lowest staffing level in decades. SSA acknowledges the need for qualified personnel but not in sufficient numbers, apparently believing that automation will replace experienced personnel. GAO, SSA's OIG and numerous other observers have all noted that ALJs could decide many more cases if only they received more processed claim files. This is the specific locus of the backlog, the pileup of cases waiting for the senior case technicians to prepare the claim files. The judges have not seen these files.

It is critical to understand that currently, of the 765,000 total pending cases, over 455,000 of them, 60% of the total backlog, are waiting in the hearing offices to be worked up for a judge to review. This is the precise location of the blockage causing the backlog.

That blockage in the flow, the lack of Senior Case Technicians, is upstream from the judges and the hearing process. Adding hundreds of judges downstream from this blockage will have no effect on the blockage. It will however actually decrease the productivity per judge; the number of cases worked up will not increase and will be divided among a larger number of judges.

In 2008, SSA hired about 150 new judges and plans to hire another 150 in 2009. Few staff have been added and many of those have gone to various headquarters areas. What has been, and is still needed first, is more staff to support the current judges and then to provide adequate support to any new judges added.

As the SSA Inspector General correctly noted in testimony before this Subcommittee, a sufficient number of competent and well trained staff is critically important to the ability of a judge to process his or her caseload.¹

The number of cases being pulled each month is less than that requested by the judges for their dockets and less than the number of dispositions each month. Judges in many, if not most, offices are unable to get the number of pulled cases to fill the dockets they have established.

We would like to discuss support staff to judge ratios as these are occasionally quoted by SSA officials. However, the formula is not available. Further, managers have informed us that in 2007 SSA changed the formula for calculating the staff to judge ratio, adding in administrative and supervisory staff who do not actually support the adjudication process. The current staff to judge ratios therefore may show a false increase since 2006 and are no longer a valid measure of staff support.

The Backlog

Towering over SSA is a backlog of over 765,000 cases claiming disability benefits under Title II and Title XVI of the Social Security Act.

SSA has blamed the backlog on insufficient appropriations from Congress, the aging of the baby boomers and at times on the ALJs who decide these cases.

A December 2007² GAO report on the Social Security disability case backlog concluded that the increases in the case backlog during the last decade were caused by a substantial growth in initial applications, staff losses (including administrative law judges), and **management weaknesses** evidenced by the number of failed reform initiatives [emphasis added].

The SSA OIG has confirmed there are a number of factors outside of the control of the judge that affect productivity: the ratio of staff to judge, quality and composition of the staff, State Agency Disability Determination Service (DDS) allowance rates and quality of case development, and the availability of worked-up cases for hearings. Additional factors are continued inadequate funding for Social Security, the failure of SSA to hire adequate support staff for judges, the failure of Social Security to manage and forecast the impact of the baby boomers and increased case receipts during the mid-1990's and the failure of the agency to implement a plan to address the same and the failure of many of SSA's reform initiatives.

Higher staff ratios allow a Judge to be more productive. More cases can be scheduled for hearing in offices where there are sufficient numbers of support staff to prepare the files; there are times when ALJs do not have as many hearings scheduled as requested because there is insufficient support staff to prepare the cases. The Agency's failure to hire sufficient support staff should be questioned as this has a direct impact on productivity and increased processing times.

The quality of staff will affect the number of cases a Judge can handle; some decision writers are attorneys and others are former clerical employees. Resources may be distributed unequally to the Judges within an office, which will impact the ability to issue decisions.

ALJ Productivity History and Overview of ALJ Productivity

The Commissioner of Social Security (COSS) has complained to Congressional committees that some ALJs are underproductive and a contributing cause of the backlog. However SSA's own statistics show SSA's ALJs have each year produced steadily increasing numbers of decisions with decreasing numbers of staff and of judges. There is no evidence to support laying the blame for the backlog on the SSA ALJs.

This was confirmed by a recent SSA OIG report³ which specifically addressed factors affecting hearing office productivity. From FY 2005 to FY 2007 the average number of case dispositions issued per ALJ increased 13%. Because of this progress, less room remains to increase the level of ALJ productivity.

Much is made of Agency "expectations" as if these expectations had any basis in fact. They do not. The Agency's expectation is five hundred to seven hundred dispositions per year. It is not based on any time study of how long it takes for a Judge to handle a case.

SSA's last study on the matter, *Plan for A New Disability Claim Process*, conducted in 1994, projected a time line for a disability claim at all levels of the process, including the administrative law judge level. The study, based on an average

¹Statement of the Hon. Patrick O'Carroll, Inspector General, SSA, before the Subcommittee on Social Security of the House Committee on Ways and Means, Sep 16 2008., page 5.

²*Better Planning, Management and Evaluation Could Help Address the Backlog*, (GA O-08-40), Government Accountability Office, December 2007.

³*Congressional Response Report: Administrative Law Judge and Hearing Office Performance*, Office of the Inspector General, Social Security Administration, A-07-08-28094.

month of 4 and $\frac{1}{3}$ weeks, concluded that a reasonable disposition rate for a judge should be 25 to 55 cases per month. The monthly disposition rate, according to the study, should average 40, or 480 per year. The judges are averaging over 500 dispositions per year.⁴

The study results revealed that a judge would spend 3 to 7 hours of time in processing each case. The Agency allows writers to spend four hours just drafting a favorable decision and eight hours to draft an unfavorable one.

It is acknowledged that there have been changes in the process since 1994, but, at the present time, most of those serve to slow down not speed up the process. The average file size grows every year. The review of electronic files (eFiles) at present is considerably slower than use of paper files. Even electronic signing (eSign) of decisions takes about four times as long as a “wet signature”.

In considering numerical performance it is important that the Congress understand a judge must carefully review the voluminous documentary evidence in the claimant’s file to effectively prepare and conduct the hearing and to issue a correct decision. Each case carries an average cost to the trust fund of \$250,000. A judge hearing 40 cases per month is entrusted to correctly decide on \$10,000,000 of cases per month, \$120,000,000 annually.

AALJ strongly supported the reform effort known as DSI. We still believe the Federal Reviewing Officer (FEDRO), or a similar reform, would provide an unbiased method to award benefits earlier in the process and prevent these cases from going to an administrative law judge hearing.

The Administrative Procedures Act (APA) seeks to insulate administrative law judges from their agencies’ dictating their decision-making to satisfy a certain goal *du jour*. We saw this in the early 1980’s when SSA wanted to cut people off the rolls and we have seen it again in recent years when various measures have been taken which create a perverse incentive to pay cases to get them out the door as quickly as possible without regard to the effect on the trust fund, known as “paying down the backlog”. In both periods the judges have been a moderating influence in not rigidly adhering to SSA’s policies, but rather trying to judge each case on its merits. This has created tension between the judges and SSA management, with management complaining that the judges do not follow SSA’s current policies. This was precisely the aim of the APA and it is precisely why the APA must not be stretched or cut to permit federal agencies to impose policies on their administrative law judges which would affect decisional independence and deprive claimants of their right to due process under the law.

These are not isolated incidents. SSA has a long history of interference in the functioning of its administrative law judges. In another instance, in the early 1980’s, for political reasons, SSA embarked on a review of just allowance decisions of just those ALJs who had a high rate of allowances. The program, called Targeted Ongoing Review or Bellmon review, was specifically designed to effect behavioral change in the high allowance judges. If no such change occurred the judge’s file was turned over to the Office of Special Counsel for “appropriate action”.⁵

ALJs have increased their dispositions thirteen percent from FY 2005 to FY 2007—this in spite of insufficient resources and an electronic file system that slows the processing of cases for the judges. This increased productivity comes on the heels of increases in ALJ productivity for the several years prior to 2005 as well.

Examining the productivity of judges for FY 2007⁶ shows this in more detail.⁷ There is variance in the number of decisions issued by each judge, however, such a distribution is normal in all human activities, usually graphed as a “bell curve”⁸ and here is further dependent on the numerous factors noted above which are outside of the control of the judges. Note that most of the judges are in the center of the curve. Note there are but 12 Judges out of 1,100—1%—who issue a very low number of decisions and who are full time judges.⁹ Some of these judges may have had extended illnesses, themselves or in the family, or may need assistance in the skills involved. This is discussed further in Standards for Administrative Law Judges, below.

⁴ See Appendix, Table 2.

⁵ *AALJ v. Heckler*, 594 F.Supp 1132, (D.D.C. 1984)

⁶ Total for FY 2008 show still more improvement, but AALJ has not yet obtained 2008 detailed data.

⁷ See Appendix, Table 1

⁸ See Appendix, Chart 1

⁹ Statement of the Hon. Patrick O’Carroll, Inspector General, SSA, before the Subcommittee on Social Security of the House Committee on Ways and Means, Sep 16 2008.,

Systemic Problems

Reports of the GAO and SSA's OIG show the Social Security disability process is plagued with serious systemic problems and that "silver bullet" solutions or attempts to scapegoat one or more classes of employees will not address, let alone solve, the problems confronting the agency.

Over-reliance on future technology. A careful review of SSA's plans to reduce the backlog discloses an over-reliance on future gains from technology. Social Security has consistently over-estimated the benefits of technology and has often implemented the technology before it has been ready for general use. Further, technology does little to assist the judge or reduce the time they spend doing their work. They still need to review the case before the hearing, conduct the hearing, prepare the hearing decision instructions, and edit the draft decision. The Agency has been claiming that technology, ePulling and other software, will reduce the number of staff employees needed to support administrative law judges. This claim too has proved false. The ePulling software, said to be able to do most of the "pulling" of claim files, has not succeeded. Meanwhile the refusal to hire new staff has now left the Agency with its lowest levels of staff in decades.

Paying Down the Backlog. Several Agency policies actually work to increase the backlog. The Agency's policies act to encourage "paying down the backlog", that is paying cases to get rid of them as quickly as possible. Higher producing judges pay a higher percent of claims.¹⁰

As one HOCALJ pointed out, *If goals are too high the corners get cut and the easiest thing to do is to grant a case.*¹¹

The first result is that some claims are paid which should not be paid. For decades judges have paid an average of 65–70% of claims. The judges doing up to 600 dispositions per year are still in that range. However the judges doing more than 600 dispositions per year pay considerably more; 6,500 claims more in 2007 at an annual cost to the trust fund of 1.6 billion dollars.¹²

But it does not stop there. If SSA conducted integrity such cases to cease the benefits, that would add several thousand more cases to the backlog.

At best, the net result is SSA permits overpaying of claims then adds to its own burden by adding cessation claims to its case load. At worst, as in recent years, SSA has not reviewed the cases and the benefit hemorrhage continues, even though it is well-known that every dollar spent on integrity reviews returns ten dollars.¹³

Top-Heavy Management. Another major problem and irony in ODAR is that in addition to a chronic shortage of clerical support staff, it is "top heavy" with managers. In this time of declining resources, we recommend that the number of managers in the ODAR regional offices be reduced and instead be transferred to the hearing offices to work on disability cases. We have further recommended that the ODAR regional offices be closed and the staff personnel be transferred to the hearing offices. There is a hearing office in each regional office city and this reform will not cause a change of location for any of the employees. In this electronic age, the functions of the ODAR regional offices can be more efficiently handled by the Office of the Chief Administrative Law Judge who can now easily communicate with all hearing offices without delay.

Other Management Problems. Replacing paper files with electronic files (e-files), begun under former Commissioner Jo Anne Barnhart, is an initiative that the AALJ endorses and supports. What is unacknowledged is that the system, like virtually all new systems, has difficulties. It needs some additions and it is slower to use in reviewing the file and in conducting a hearing. SSA's expectation is that once the system has matured it will require fewer people to do the same work. That may be true some day, but it is not yet true. When the system will be fully de-bugged and running smoothly is unknown. SSA's rigid adherence to this doctrine in failing to replace lost staff has resulted in serious shortage of staff.

While we embrace the use of technology in the future, current Agency initiatives do little to reduce the disability case backlog. For administrative law judges, electronic files slow down the process because pages take longer to "load" and view. Electronic organizing of files has not yet been perfected. Equipment failures cause delays, some for long periods, because the system is often not strong enough to handle peak work loads.

¹⁰ Statement of the Hon. Patrick O'Carroll, Inspector General, SSA, before the Subcommittee on Social Security of the House Committee on Ways and Means, Sep 16 2008., page 5.

¹¹ *Id.*

¹² Appendix, Chart 2

¹³ Statement of the Hon. Patrick O'Carroll, Inspector General, SSA, before the Subcommittee on Social Security of the House Committee on Ways and Means, Sep 16 2008

Dial-A-Judge. The use of desktop monitors to conduct hearings and conducting video hearings from the offices of attorneys, termed Dial-A-Judge by some commentators, is fraught with dangers. The first is that the claimant can easily be prompted by an unscrupulous representative out of sight of the camera. Most important is that the administrative law judge hearing is the first time in the Social Security disability process where the American citizen has a chance to meet face-to-face with a high ranking government official and be permitted to explain the elements of his/her case. A major part of due process is making the claimant feel that he/she had a day in court and received a full and fair hearing. This basic reassurance of fairness is essentially lost if a government official is not present at the hearing site. Is it also more difficult to assess credibility using a computer monitor and hence more problematic in delivering a full and fair hearing to both the claimant and the trust fund.

“Shortcuts” are more often counterproductive. A “streamlined” claim file is one which is not worked up, i.e., prepared for hearing. Duplicates of often hundreds of pages of exhibits are not removed. Exhibits are not identified, placed in chronological order or even numbered. This allows the clerks to spend less time in preparing a case record. However it requires that the judge, the decision writer, medical experts and the representative, all of whom are at a higher pay grade, to spend far more time reviewing the record. There are also serious questions of whether or not the “streamlined” file violates due process when the claimant is handed an unorganized mass of evidence and whether or not the “streamlined” file preserves an adequate record for subsequent reviews.

Another Agency initiative, the “rocket docket” changes scheduled hearings to a “cattle call” in which unrepresented claimants are told to appear at the beginning of the day. The purpose is to determine which ones will not appear. Their claims are dismissed. Those who appear are told their hearings will be held in the near future. This discriminates against unrepresented claimants who may have to travel long distances to the hearing office on more than one occasion to have their cases heard.

Smoke and Mirrors

Many of SSA's highly publicized “Initiatives to Reduce the Backlog” in fact can have little if any effect on actually reducing the backlog. A few examples:

The National Hearing Center took five judges from several offices and put them together in a new office in Falls Church. Moving five judges does nothing to reduce the backlog.

As explained above, hiring 150 new judges without adding adequate staff is a hollow gesture. It is equivalent to purchasing 150 new trucks and fuel for 20.

SSA has expended approximately 50,000 hours of overtime to aid ODAR in getting its work done. The faults are that the money was spent on non-ODAR personnel who do not know the ODAR work and the overtime was viewed as a benefit and thus rotated among field office personnel. The personnel who learned the job this week were replaced the following week by new personnel who did not know the job. With time lost for on-the-job training plus overtime premium, the cost to SSA has been excessive and the production sub-standard.

Even the initiative to clear out all cases more than 1,000 days old, while very commendable, did not reduce the backlog. Dozens of pages in releases and reports have been devoted to hailing this as reducing the backlog when in fact it merely shifted the production effort from one group of claims to another.

SSA's Public Relations machine is endeavoring to convince Congress and the public that it is reducing the backlog but a review of the initiatives discloses that, while they may give the appearance of reducing the backlog, in fact most do not.

Standards for Administrative Law Judges

The judges are not the problem. The judges did not cause the backlog and as a group have worked hard, with ever-decreasing resources, to contain the backlog. The Commissioner has at times acknowledged that the judges in Social Security are “producing at record levels” as they have year after year. Nonetheless criticisms are being leveled at SSA's judges. It is undisputed that judges work at different levels of efficiency and varying levels of diligence. That is equally true of any group of working people including SSA employees generally.

Accountability. The Commissioner argues that there must be accountability for the judges. The judges accept accountability but not simply measured by the number of decisions produced. Judges are accountable to the claimants to ensure they

get a full and fair hearing. They are also accountable for the trust fund to ensure that it is not abused.

Pay Rates. Judges must be responsible for the percentage of claims paid as discussed above under Paying Down the Backlog. Although pay rates are subject to external variables such as the regional work ethic, unusually high or low percentages of certain types of cases, local unemployment rates, among others, pay rates at the very high and low extremes should be suspect. AALJ is unaware of any effort by SSA to review this important issue.

Judges with Lower Dispositions. The Association of Administrative Law Judges has repeatedly offered its assistance to the Social Security Administration to meet with the judges the agency contends have the lowest case production to attempt to determine the reasons for the work production, and to attempt to address any existing problems. SSA has refused to give us the data to identify judges with lower dispositions. Recently AALJ was able to obtain the data from the website of a newspaper which was given the data by SSA. As a result AALJ initiated a program of contacting those judges with lower dispositions and offering to provide assistance of other judges to help those judges who may be having problems handling as many claims as they would like.

The Social Security Administration (SSA) is proposing an amendment of the current and longstanding regulatory practice that authorizes the administrative law judge to set the time and place for hearing in an attempt to force administrative law judges to hear and decide more cases. Not only do the data show this unnecessary, it is well-established that production quotas not only violate the APA, but also are inconsistent with 5 USC 4301& 4302. See *Nash v Bowen*, 869 F.2d 675 (2d Cir 1989) which holds that while production goals are a permissible exercise of Agency management, dispositional quotas are not permissible.

Rules of Conduct for Administrative Law Judges. AALJ has long recommended that the American Bar Association's Model Code of Judicial Conduct be adopted for administrative law judges. It should be noted that the last American Bar Association model judicial code specifically included administrative law judges. However, since the 1970's, the Agency has consistently refused to work with us in this effort.

AALJ is concerned with the lack of appropriate standards of conduct for administrative law judges. Currently some judges are being charged with "conduct unbecoming an administrative law judge" which is nowhere defined and can mean whatever the Agency wishes it to mean in a given case.

Needs. From SSA and AALJ, communication and cooperation are almost absent and both are needed. Carrots and sticks are not needed.

From the Congress, adequate funding to bring the *support* staff to a sufficient level before more judges are hired, with oversight to ensure it is fully accomplished. Additionally AALJ believes more oversight is needed to ensure that the systemic changes discussed herein are fully effected including responsibly reducing the number of claims which go to hearing; conducting integrity reviews; reviewing extremely high and low pay rates; adoption of the ABA's Model Code of Judicial Conduct; review of management needs in the Agency, among others.

Conclusion

We thank you very much for this opportunity to address you on these issues that are literally vital to many Americans. Social Security judges are working hard to attempt to address the disability case backlog. The AALJ had an excellent relationship with former Commissioner Barnhart, and worked hard with her to reform the hearing process. The AALJ and its members stand ready to do their best to reduce the backlog, reduce the hemorrhaging of benefits and to adopt proven new technologies.

We are not the problem and we are prepared to be part of the solution.

Appendix

ALJ Dispositions, Decisions, Paid Rates 2007

Dispositions per year per Judge	0-200	201-300	301-400	401-500	501-600	601-700	701-800	801-900	901-1000	Over 1000	Totals
Number of Full Time Judges	12	84	189	286	262	124	59	15	17	17	1,065
Total Dispositions	2,172	21,506	67,187	128,920	143,070	79,319	44,020	12,684	16,086	22,312	537,246
Total Dismissals	190	3,330	11,106	19,116	21,806	11,705	7,128	2,383	2,765	2,819	82,358
% of Dismissals	9%	15%	17%	15%	15%	15%	16%	19%	17%	13%	
Total Decisions	1,982	18,176	56,081	109,804	121,264	67,614	36,892	10,291	13,291	19,493	454,888
Total Decisions Paid	1,268	12,409	37,729	77,104	84,910	49,666	28,001	8,267	10,033	16,571	325,958
Average Paid Rate	64%	68%	67%	70%	70%	73%	76%	80%	75%	85%	

Table 1

Mean Dispositions Per Year	504
Median	498
No. Judges Under 500 per year	642

Table 2

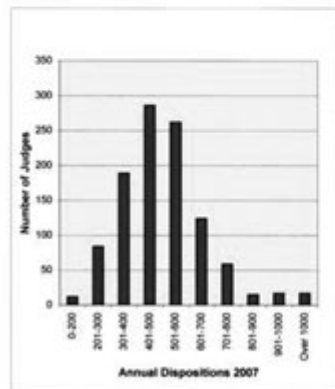


Chart 1

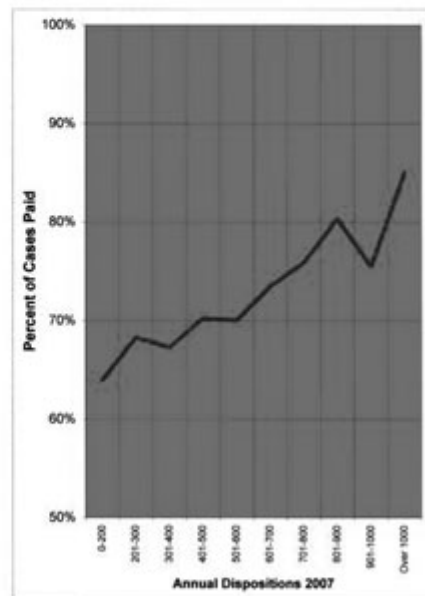


Chart 2

Sources: The Oregonian, as reported by SSA.
OIG SSA, report of Sep 16 2008.

Every 10% increase in the percent of Paid decisions
costs the trust fund an additional \$ 11.5 billion per year.

Chairman TANNER. Thank you, Judge.
Mr. WARSINSKEY.

**STATEMENT OF RICHARD E. WARSINSKEY, IMMEDIATE PAST
PRESIDENT, NATIONAL COUNCIL OF SOCIAL SECURITY
MANAGEMENT ASSOCIATIONS, INC.**

Mr. WARSINSKEY. Chairman Tanner and McDermott, Congressmen Johnson and Linder, my name is Rick Warsinskey, and I represent the National Council of Social Security Management Associations.

Our association represents the Field Office and Teleservice management from over 1,300 offices nationwide. The Field Offices are your local Social Security offices that handle walk-in Social Security business such as applications for benefits and replacement Social Security cards. The Teleservice Centers are where the 57 million 1-800-772-1213 calls to SSA are answered throughout the Nation. We are the frontline representatives of the agency.

I also help coordinate the activities of the SSA Advocacy Group, and I have been a manager of the Social Security Office in Downtown Cleveland for 14 years.

I am pleased to have the opportunity to be here today. We are very appreciative of the fact that Congress appropriated \$126.5 million more for SSA in Fiscal Year 2009 than the President recommended. We are also very appreciative of the funding included for SSA in the American Recovery and Reinvestment Act. And finally, we are pleased to see the President recommended a funding level of \$11.6 billion for SSA's administrative funding for Fiscal Year 2010. All of this is a lot of money, but these funding levels are absolutely necessary to address the severe challenges facing SSA that are growing with the deepening recession.

Let me outline several of the key challenges SSA faces:

One, SSA's hearing backlog is at a near record level of 765,000 hearings, up from about 300,000 earlier this decade. Hearing processing times have stayed in the 500-day range.

Two, the number of hearings received this Fiscal Year has increased by about 10 percent. These hearings are related to claims filed before the recession started.

Three, the number of new initial disability claims is increasing on a weekly basis and is up nearly 14 percent this calendar year.

Four, retirement claims being filed are up 28 percent from 2 years ago.

Five, the number of customers walking into Field Offices continues to grow and is at record levels, even though Internet claims filed have doubled this year. Waiting times are up 61 percent since 2002, and nearly 80,000 people are leaving our offices without service every week this year due to the long waits.

Six, the Field Office telephone service is deplorable. I repeat, deplorable. Nearly 50 percent of the over 54 million business-related callers who try to contact Social Security Offices receive a busy signal.

Seven, Field Offices and Teleservice Centers are struggling to provide training to their staff to keep them updated because the staff needs to be moving workloads.

Eight, SSA is facing a major retirement wave over the next few years.

And finally, nine, there is a backlog of 1.4 million CDRs and 700,000 fewer SSI redeterminations that are being done this year than earlier this decade. This is costing taxpayers over \$10 billion.

Ideally, it would be wonderful if we could address all of these challenges in one year. The reality is that the challenges SSA faces cannot be fixed with 1 year's funding, especially as the recession is adding so much more work to SSA. Hard decisions will need to be made where to direct agency resources as there is both a strong

need to address the growing workloads and backlogs and to address workloads such as CDRs and SSI redeterminations.

But the funding we receive this year and hopefully next year will be a major boost to addressing our backlogs and providing improved service. We ask for your continued support for adequate funding for SSA. We also ask that you take a hard look at legislative changes that would reduce our administrative costs and improve program fairness. These are outlined in our written statement. We believe that the American public demands and deserves to receive good and timely service for the tax dollars they have paid to Social Security. We also believe the stewardship of the public's hard-earned tax dollars needs to be at the highest level.

I thank you for this opportunity to appear today and welcome any questions you may have.

[The prepared statement of Mr. Warsinskey follows:]

Statement of Rick Warsinskey, District Office Manager, Cleveland, Ohio; and Immediate Past President, National Council of Social Security Management Associations, Inc.

Chairman Tanner, Chairman McDermott, Congressman Johnson, Congressman Linder, and Members of the Subcommittees, my name is Richard Warsinskey. I represent the National Council of Social Security Management Associations (NCSSMA). I have been the manager of the Social Security office in Downtown Cleveland, Ohio for nearly fourteen years and have worked for the Social Security Administration for thirty-three years.

I also help coordinate the activities of the Social Security Administration (SSA) Advocacy Group. This group works to improve SSA's services at all levels. Members include senior citizen organizations and disability support groups from across the country, SSA and Disability Determination Services associations, and Federal management associations and employee unions. On behalf of our membership and in support of our SSA Advocacy Group, I am pleased to have the opportunity to submit this written testimony.

NCSSMA is a membership organization of about 3,400 Social Security Administration (SSA) managers and supervisors who provide leadership in more than 1,300 Field Offices and Teleservice Centers throughout the country. We are the frontline service providers for SSA in communities all over the nation. We are also the federal employees with whom many of your staff members work to resolve problems and issues for your constituents who receive Social Security retirement benefits, survivors or disability benefits, or Supplemental Security Income. From the time our organization was founded over thirty-eight years ago, NCSSMA has been a strong advocate of prompt and efficient locally delivered services nationwide to meet the various needs of beneficiaries, claimants, and the general public. One of NCSSMA's top priorities is a strong and stable Social Security Administration, one that delivers quality and prompt community based service to the people we serve, your constituents. We also consider it a top priority to be good stewards of the taxpayers' moneys.

A New Day for the Social Security Administration

Let me begin by saying that we are very appreciative of the support that the House Ways and Means Committee has provided SSA for so many years. Your leadership in recognizing the critical need for adequate resources at SSA has resulted in vital funding that will help bring a "new day" to our agency. We greatly appreciate the support for funding at a level above the President's proposed budget in FY 2009 and for the \$1.092 billion in funding included for SSA in the American Recovery and Reinvestment Act of 2009. We hope you will also support the President's FY 2010 Budget Request of \$11.6 billion for SSA's administrative expenses.

Our testimony will focus on the current challenges facing SSA and why it is essential that the agency continues to receive the resources it needs from Congress to provide assistance that the American public deserves. Many of the challenges we will focus on in this testimony were also highlighted in the recently released January 2009 Government Accountability Office (GAO) report on SSA entitled: "*Service Delivery Plan Needed to Address Baby Boom Retirement Challenges*." Please see: <http://www.gao.gov/new.items/d0924.pdf>. We fully support the conclusions of this report.

Summary of Challenges Facing SSA

SSA's Funding Shortfalls

In FY 2008, Congress appropriated \$148 million above the President's Budget Request for SSA's administrative funding. This action marked an important milestone related to SSA's administrative funding. From FY 2001 to FY 2005, Congress appropriated significantly less per year for SSA's administrative funding needs than the President requested. It is also important to note that the level of funding requested by the President was often significantly less than the level of funding recommended by the Commissioner of Social Security. In FY 2006 the final funding level approved by Congress was \$300 million less than the President's Budget Request and almost \$1 billion less than the Commissioner's Budget Request. In FY 2007 the final level approved by Congress was \$200 million less than the President's Budget Request and \$930 million less than the Commissioner's Budget Request. The inadequate level of resources available to the agency for so many years had a direct and negative effect on SSA's services in a number of ways.

Hearing Offices and the Disability Backlogs

The most visible result of this under funding has been the massive increase in the number of pending disability appeals hearings. The annual number of pending hearings, as compared to earlier in the decade, has increased by over 400,000. Currently there is a near record level of 765,000 hearings pending, and over 80,000 have been filed by veterans. The average wait time for a final hearing decision has also increased from about 300 days to about 500 days. The long wait to be heard by an Administrative Law Judge for many can lead to bankruptcy, homelessness, the breakup of families and loss of friends, lack of critical medical care, **and sadly, some individuals die while waiting for a hearing. This is happening in every state and territory in the nation.**

The number of pending hearings has been over 750,000 since December of 2007 even though the number of available Administrative Law Judges (ALJs) has increased from 943 in June 2008 to 1064 in February 2009. This represents a 12.8% increase in available ALJs. Because all of these new ALJs needed to be trained, their hearing dispositions are only just now increasing as they gain experience and become more efficient and productive.

At the same time new hearing requests have increased 9.5% since the beginning of Fiscal Year 2009. Thus the increased number of hearings has added to the challenges faced by the Office of Disability Adjudication and Review (ODAR). This increase in hearings does not even include a new wave of requests that will start hitting ODAR later this year.

Beginning in the fall of 2008, disability claims filed in SSA Field Offices have accelerated and the number is increasing daily. This increase in the number of claims being filed started just as the major downturn in the economy hit the nation. Since the beginning of Fiscal Year 2009 the State Disability Determination Services (DDSs) have received 10.0% more initial disability claims than they did during the same period last year. The percentage of initial disability claims filed each week has increased in every consecutive week of this fiscal year. In fact the increase per week for Calendar Year 2009 to date is 13.7% versus the 10.0% for Fiscal Year 2009 to date. At the same time the number of pending claims in the DDSs has increased from 556,670 to 623,349 (as of March 13). This is a 12.0% increase. There are projections that this workload could climb to 800,000 as the impact of the recession deepens. One major challenge the DDSs face is whether they have the ability to expand quickly enough to address this workload.

It takes on average about 10 months for a new initial disability claim that is not approved to become a new hearing. As a result, by late this summer we will see the leading edge of this increasing disability claims tsunami hitting ODAR.

We are also **very concerned** about how the furloughs of state employees working for DDSs will impact the disability backlogs. California has already implemented a furlough plan consisting of two days off per month. This is a 10% reduction in the number of hours worked in the DDSs. **This can only exacerbate the backlogs.** In Oregon, the state is proposing 177 DDS employees be furloughed a total of 24 days during the next two years. Reducing the number of disability claims being processed could scarcely come at a worse time. What is most perplexing is that the DDSs receive their funding from the Federal Government. So there is **no financial advantage** to the states that furlough DDS employees. In fact, SSA will withhold funds from a state for DDS employees while they are on furlough.

Baby Boomer Customers

As all of this is occurring, SSA Field Offices are facing a tsunami of their own: the Baby Boomers. This year applications for Social Security retirement benefits are up nearly 28% from two years ago and 17% from this time last year.

SSA Field Offices are also seeing a record number of customers as more and more people are coming to our offices for assistance. The week ending January 9, 2009 was a record-setting week as 1,067,089 customers came into our offices. Waiting times in many offices have increased significantly and the number of people who left without service has also increased. SSA Field Offices also had 2.5 million more customers in Fiscal Year 2008 as compared to Fiscal Year 2006.

In Fiscal Year 2008 about 3.5 million customers waited more than 1 hour to be served. This fiscal year to date, the waiting times are 61% higher than they were in 2002. Some offices such as Houston Southwest and McAllen, Texas; Chicago Southeast and Chicago Heights; South Bronx and Brooklyn Flatbush, New York; Norfolk, Virginia; Jersey City and New Brunswick, New Jersey; and right here in Washington, DC (M Street Office) averaged nearly an hour or more wait for customers from the opening of the office in the morning until the closing at the end of the day during FY 2009. These times are certainly excessive, but they are not the most extreme. The highest waiting times are in Puerto Rico where some customers must wait nearly 100 minutes. Note, some of this is attributable to the fact that Internet applications are not available in Spanish. In addition, the Orlando Social Security Card Center which sees nearly 500 people a day averages approximately 43 minutes waiting time per customer this year.

SSA Field Offices are also seeing a significant increase in the number of people who leave without receiving service. In fact, this calendar year to date we are averaging nearly 80,000 people a week, or 8.4%, that leave our offices without receiving service. Many Field Offices have a much higher percentage. Examples of these Field Offices are:

- Memphis South, TN: 10.5%
- Seattle Downtown, WA: 12.8%
- Charleston, SC: 14.0%
- Mobile, AL: 14.1%
- Houston Northeast, TX: 14.8%
- Chicago East, IL: 15.2%
- Austin, Texas: 16.0%
- Norfolk, VA: 16.8%
- Oakland, CA: 19.8%
- Brooklyn Flatbush, NY: 20.1%
- Clearwater, FL: 21.7%
- Baltimore NE, MD: 27.0%
- North Las Vegas, NV: 33.7%

In a Survey of our field management that was conducted in February of 2009, about 70% of the respondents indicated they had seen an "increase" or "significant increase" in waiting times in the last year.

What is alarming about this increased number of customers and waiting times is that this has occurred while the number of Social Security claims filed on the Internet doubled from the previous year. For Fiscal Year 2008 about 14% of all Social Security claims were filed on the Internet; that number is now approaching nearly 30%.

Part of our challenge is that Social Security Field Offices offer appointments both for in-office customers and by telephone. As a result, most Field Office interviewers are often providing assistance to individuals with appointments and cannot accommodate customers who come in without appointments. At the same time, many offices cannot increase the number of available appointments because they do not have enough interviewers. Quite simply, there are just not enough staff in SSA Field Offices to adequately serve the American public.

This concern was articulated by a comment we received from an Assistant District Manager in our recent NCSSMA Survey of Management Report:

We can't do walk-ins because everyone is interviewing appointments, and we don't have enough staff to handle the demands of our service area. We simply are not able to stay within twenty-one days on our appointments.

Another Assistant District Manager voiced these concerns about trying to handle all the customers that walk through the doors:

The waiting time in our Field Office for walk-in traffic is usually anywhere from 1-3 hours. Our waiting room is often times packed full and ex-

tends into the hallway of the building. Our office has a very high volume of walk-in traffic and this makes it difficult to anticipate the volume of people who come in and need to see Claims Representatives each day. There have been days where we are so busy that we are not able to fully serve all of the people who walk through the doors. We must resort to setting up appointments and making them return on another day. The Field Offices really need additional staff to be able to handle the volume of walk-in traffic and to be able to balance this with providing high quality service. Often times the Claims Representatives are so busy interviewing that they rush and make careless mistakes which may result in payment errors, missing entitlements, and possible recontacts.

In order to relieve very overcrowded locations with high waiting times, there is a compelling need to open new offices and expand the size of current offices to adequately staff existing locations. This has become an escalating problem as there have been significant population changes in certain parts of the country. For example, in 1984 there were 13 million people in the state of Texas. Today there are 23 million people. This is a 77% increase in population. In 24 years, one new Social Security office has opened in Texas (Mid-Cities) and one office (Nacogdoches) has closed. The population of Houston alone has doubled in the last 24 years. Yet, there are the same six Field Offices with only two-thirds of the staff. The same could also be said of the San Antonio area.

Field Office Telephone Service

A recent study by SSA's Office of Quality Performance (OQP) focused on the agency's Field Office telephone service. It stated that in FY 2007, 45% of the approximately 54 million callers who tried to reach a Field Office by telephone said that they had received a busy signal or a recording that all lines were busy. **Because many of these callers may have called more than once and on multiple days, the actual busy rate is likely much higher than the 45% indicated by the study.**

In our Survey of Management last month the question was asked: "What is most needed to improve telephone service?" 84.6% of respondents indicated they did not have sufficient staff to answer their phones and meet other service demands.

The challenges of our telephone service are evident in the responses received from two District Managers to our recent Survey.

"Most days, we are so short of staff that we don't even assign a person to answer the incoming lines. What we do instead is just pick up the phone when it goes to over ring, which is 20 minutes after it goes to hold. Usually I am the one who answers it then. Our phone service is deplorable. And we are so busy interviewing face-to-face or teleclaims or adjudicating Internet claims that we don't return phone calls left on voicemail promptly either. It's not that we don't want to provide excellent phone service but that with our staffing so low, we just can't!"

"Field Office telephone service is essentially non-existent in terms of incoming calls. This is due directly to the fact that Field Offices are generally understaffed. Field Offices handle more phone calls yearly than does SSA's 800 Number system, yet for many years the focus in terms of telephone service has been on the performance of the 800 Number system and has essentially ignored the prime telephone service delivery system in SSA."

The recently issued GAO report on Field Offices recommended that SSA establish standards for Field Office customer wait times and telephone service. However, SSA did not agree with this recommendation as it would create problems for SSA by diverting an already thin staff away from processing claims and post-entitlement work. This disagreement shows a core challenge facing SSA. The agency simply can't do everything, especially reducing waiting times and improving inadequate telephone service, without the necessary resources. Field Offices are struggling now to keep up with the large increase in Internet claims. It is a high priority to move these claims so hard choices are being made on where to direct resources on an hour-by-hour basis. One key challenge of the Internet claims is that most require a telephone contact to go over the application with the individual. This is to verify proper completion of all questions and to ensure the proper payment is made. This often requires pulling Field Office staff from the interviews coming in to make these calls. This not only increases waiting times but it also ties up the telephone lines resulting in busy signals for other customers who may be trying to reach the office by telephone. As a result, Field Office management and staff are forced to make service delivery choices that are unsatisfactory to our staff and customers alike.

Training

In our most recent Survey less than half the managers agreed or strongly agreed that their staffs received adequate training. Of those who believed that employees in their offices did not receive adequate training, 63% stated inadequate staffing was the primary reason. And about 39% said they had insufficient time to prepare and deliver training.

It is obvious that training is being shortchanged in many Field Offices due to the lack of resources. These responses from our recent Survey demonstrate how the lack of resources impacts training in our offices:

"We must use all of our hours that we are not open to the public to get the work completed. We are lucky to allow one hour a week for training. This is a shame for the employees and the public who will end up with poor service due to this. Lack of training impacts our wait times as well as repeated visits to get actions completed if not done properly the first time."

"The problem in the case of new hires is that we cannot pull anyone full time to train continuously due to the interviewing and workloads. In addition, more training could technically be provided to our staff; however, if we train multiple times per week before the office opens, the staff does not have adequate time to process workloads. We try to maximize the training provided without taking too much "down time" away from the Claims and Service Representatives. It's an unfortunate choice to have to make."

It should be noted that the two main public contact positions in the Field Offices are both highly technical and the half-life of that technical knowledge spans only a 3-year period. Policies and processes change routinely and new software improvements are implemented multiple times per year. When the agency short changes the ongoing training of its technicians, it is impossible to take advantage of the resource savings that these process improvements can ultimately provide. When it comes to training delivery, we are caught in a vicious cycle; we can't train because we are too busy processing workloads and we can't process workloads in the most efficient manner because we have not been trained.

SSI Program Integrity and Quality

In Fiscal Year 2008, 1.2 million SSI redeterminations were completed. (An SSI redetermination is a review of an SSI recipient's benefits to ensure that they are being paid properly.) Over the five-year period from FY 2004 to FY 2008, the number of SSI redeterminations completed declined by 47%. Over the ten-year period from FY 1999 to FY 2008, the number of redeterminations completed declined by 43%. This reduction in the number of SSI redeterminations completed was directly related to the level of appropriated funding received by the agency during those fiscal years.

The reduction in the number of SSI redeterminations completed was a contributing factor in the increase of the SSI overpayment error rate from 6.4 percent to 9.1 percent from FY 2005 to FY 2007. The overpayment error rate is currently at its highest rate in over 30 years. **There is a direct correlation between the increasing error rate and the decline in the number of SSI redeterminations completed.** In FY 2007 the projected overpayments totaled \$3.9 billion. These substantial losses to the Treasury and the trust funds will continue unless the trend toward completing fewer redeterminations is reversed. **It is very important to note that conducting SSI scheduled redeterminations saves \$10 for every \$1 spent in administrative dollars.**

In FY 2009 the increased appropriated funding for SSA will allow the agency to increase the number of SSI redeterminations by an additional 500,000 cases, but this will still be 700,000 cases below levels completed earlier this decade and results in 700,000 missed opportunities to save program dollars.

In our most recent Survey, responses indicated that while 22.5% of managers felt that the quality of work produced in their office had improved in the last two years; nearly one-third of managers (33.6%) reported that the quality of work produced in their offices was worse or significantly worse. Of those, 65.6% cited two factors as the principle reasons for the diminished quality—not enough staff desk time (38.1%) and not enough staff (27.6%).

The responses below from the Survey address the challenges facing SSA related to quality of work product:

"There are a variety of reasons for quality not being as high as in the past. Certainly, we need more staffing, but there is so much work and not enough staff to do the work. There is not enough time to devote to training to learn new policies and procedures."

"The constant pressure to meet appointment goals, coupled with our walk-in and telephone traffic not only exceed the limits of our ability to monitor newer employees but also their capacity to spend thoughtful time researching unfamiliar issues. There is always a drumbeat: just get it done; just get it done."

"The fact that we have no staff to check work that goes out is frightening."

Continuing Disability Reviews

SSA has also significantly reduced the number of medical Continuing Disability Reviews (CDRs) that are completed. (A medical CDR is a review of a Social Security or SSI disability beneficiary's eligibility for benefits based on their medical condition. If their condition has improved enough to show they can work then their benefits will be terminated.) In Fiscal Year 2008, a total of 235,000 full medical CDRs were conducted. This is down from 800,000 per fiscal year from earlier this decade. The reduction in the number of CDRs was directly due to the level of appropriated funding provided for SSA. **SSA has a backlog of 1.4 million unworked medical CDRs.**

The savings realized by completing medical CDRs are substantial. As of Fiscal Year 2007, for every \$1 spent there is a \$11.70 savings in Social Security trust fund assets, SSI funds from General Revenues, and Medicare and Medicaid payments. In Fiscal Year 2007 the Disability Determination Service offices spent \$281 million to complete CDRs. The lifetime savings realized by completing these CDRs was an astounding return of \$3.3 billion. Clearly from the stewardship standpoint, it is imperative that the agency be provided with the necessary resources to catch up the medical CDR workload and keep it current.

However, the same DDSs that are also dealing with a large increase in new disability claims would also be called upon to conduct these additional reviews. In order to meet both of these challenges and to also assist ODAR in reviewing old disability cases for potential allowances, DDS capacity must be significantly increased. Such an increase in capacity may take several years to accomplish, but planning for this would need to start immediately to meet these multiple challenges.

The DDSs are also facing a significant retirement wave. Much like the Field Offices, they did significant hiring in the 1970s when the SSI program started. DDSs also have a high attrition rate. In fact in FY 2009, DDS attrition was 8.1% overall and 10.1% for examiners.

Fortunately there is substantial DDS hiring planned for this year utilizing the Stimulus Bill resources and through the FY 2009 Omnibus Appropriations funding. But the training of DDS examiners takes up to six months. And it takes about 18 months before an examiner can do a full range of work. The DDSs also have to pull a substantial number of senior examiners to train and mentor the DDS examiners.

The CDR cases are also handled by the most senior examiners. A concern that must be addressed is how can these examiners absorb an increase in completing CDRs in FY 2010 while they are also trying to move a large increase in new disability claims, address the additional reconsiderations, assist ODAR with their backlog, and finally mentor all the new hires.

Realistically SSA may not have any capacity to complete additional CDRs in FY 2010. Many of the DDSs also have significant space issues and will need to have time to expand their space to absorb a large increase in hiring. The President's FY 2010 Budget Request calls for an increase of \$255 million in program integrity funding. If SSA increases the number of redeterminations to the maximum level, this would still leave at least \$150 million unspent. If an additional 200,000 or so CDRs were completed this could utilize the additional money. With a backlog of 1.4 million CDRs it certainly would be desirable to spend this funding as \$150 million spent on CDRs would save over \$1.7 billion. We suggest that there really needs to be a multiyear plan to allow the DDSs to ramp up and move the CDR backlog while still continuing to handle the additional initial claims, reconsiderations, and assist ODAR. This plan will need to take into account all of the additional workloads, in addition to the need for increased training and space and equipment for the DDSs.

New Workloads for SSA

SSA Field Offices have struggled to keep up with new workloads as Congress continues to add to SSA's list of responsibilities, such as administering new requirements for Medicare Parts B and D, and conducting Social Security Number verifications and other immigration-related activities such as the E-Verify program. However, SSA's administrative funding has not kept pace with the agency's increased responsibilities. We are especially concerned about additional workloads from the E-Verify program that are being discussed. We are also concerned about the additional work that could result from increased enforcement of "no match pro-

visions.” It is imperative that the Department of Homeland Security (DHS) reimburse SSA for these costs.

SSA’s Retirement Wave

SSA completed a substantial amount of hiring in the 1970s when the agency began to administer the SSI program. SSA reduced staffing levels significantly in the 1980s. The agency did little hiring during this period. This has created both a doughnut hole and bubble in SSA’s staffing demographics. Additionally, the agency hired new employees on a very limited basis during the early 1980s through the late 1990s. As a result, there are only a limited number of mid-career employees. Over 53% of SSA staff is eligible to retire by 2017. Not only is there a need to increase the number of staff due to rising workloads and large backlogs, there is a need to get people hired and trained before we lose so much of our institutional knowledge and experience.

In addition to the issues above, 70% of the SSA management employees will be eligible for retirement by 2017. This significant loss of leadership is compounded by the fact that many of our current management positions are not being filled because of concerns about supervisory ratios. With the challenges of ever-increasing workloads and reduced staffing levels, it is extremely important to have sufficient management to lead SSA employees. Also, a more aggressive and proactive approach is needed for succession planning to develop our next generation of leaders.

How Recent Funding Approved for SSA Will Improve the Agency’s Services and Stewardship

Recent legislation approved by Congress has included additional resources for SSA. Both the American Recovery and Reinvestment Act (Stimulus Bill) and the FY 2009 Omnibus Appropriations Act include significant funding for SSA. In addition, the President has proposed a level of \$11.6 billion for SSA’s FY 2010 administrative funding. If approved this would result in a \$1.1 billion increase in SSA’s appropriated funding from FY 2009 to FY 2010.

The Stimulus Bill included \$1.092 billion for SSA. Roughly half of the funds, \$500 million, provided for SSA in the Stimulus Bill should result in immediate improvements related to SSA’s services and stewardship. Of this amount, \$40 million was included for health information technology research and activities which should assist in the adoption of electronic medical records in disability claims. This technology could improve the disability claims process by shortening the length of time it takes to render a decision on a disability claim and improving the accuracy of initial claims decisions. Additionally, \$90 million was included for SSA to administer the cost of the \$250 economic stimulus payments to Social Security beneficiaries and SSI recipients. The remaining funds, \$500 million, are allocated for the much-needed replacement of the National Computer Center, the full cost of which is estimated to be about \$750 million.

If the President’s Budget Request of \$11.6 billion for SSA’s administrative funding is approved for Fiscal Year 2010 the agency will be able to continue improving its services and stewardship activities. SSA must receive at least a \$400 million increase just to address the increased inflationary costs from FY 2009 to FY 2010. Any additional resources could then be directed toward other SSA workloads.

Some recommendations related to where these resources could be appropriately and effectively utilized:

1. Resources are needed for the Office of Disability Adjudication and Review, Disability Determination Services, Program Service Centers, and Field Offices.

In order to reduce the unconscionable backlog in hearings and to process the increased receipts of disability claims and hearings due to the severe recession, additional resources are necessary. In ODAR many more Administrative Law Judges will be needed along with support staff. For every one Administrative Law Judge (ALJ), about 4.5 support staff are needed. If SSA is able to hire 200 more ALJs, then it would result in the need for about 900 more support staff to adequately assist them. To support this additional staff more space and equipment will be necessary.

The Disability Determination Services (DDSs) are currently staffed at about 900 fewer positions than they were allocated three years ago. The DDSs currently have about 13,600 positions. The DDSs are receiving about 10% more disability claims this year compared to last year, and this number is growing on a weekly basis. This indicates the need of at least 1,300 more positions plus the necessary costs to support these additional positions. This increase does not include additional positions that would be required to complete additional CDRs (see information above and below on CDRs). Additional positions could also be

used to perform more remands from ODAR. If more remands could be performed this would reduce the number of hearings.

2. Field Offices must have additional staff to answer the telephones and provide quality service to the public when they visit community based Field Offices. Additional staff would also assist Field Offices in handling the significant increase in Internet workloads.

Current telephone busy rates and in-office wait times are unacceptable. **Clearly a busy rate of nearly 50% when you call a Field Office is an unacceptable level of service. The 61% increase in waiting times in Field Offices since 2002 is also unacceptable.** In our recent Survey, 77.4% of respondents reported having insufficient staff to keep workloads current. Only 20.1% thought that their offices were adequately staffed. Managers estimated that they would need a staffing increase of 13.5% (**over 3,600 positions**) to have sufficient resources to provide adequate levels of service. **Managers specifically attributed the effect of inadequate staffing levels on the ability of their offices to provide a satisfactory level of public service.**

3. A significant increase in SSI redeterminations and CDRs could be accomplished with additional resources.

In fact, if an additional 700,000 SSI redeterminations and 470,000 CDRs were completed SSA would be at the same level the agency was at earlier this decade.

The President's FY 2010 Budget Request calls for spending about 50% more, or \$255 million, on SSI redeterminations and CDRs in FY 2010 over FY 2009. **This additional expenditure of administrative resources could save taxpayers over \$2.5 billion.** If more funds were appropriated to SSA in FY 2010 this savings could be even higher. As mentioned earlier in this statement, the backlog in CDRs is currently 1.4 million.

In Fiscal Year 2009 the unit cost for completing each CDR was \$847. To work the entire backlog down in FY 2009 dollars it would cost \$1.186 billion. **The potential savings would be \$13.92 billion.**

Obviously there probably isn't sufficient funding available to eliminate the backlog in SSI redeterminations and CDRs in one year. This is especially true considering the enormous backlog in hearings as well as growing workloads in both Field Offices and the Disability Determination Services. However, SSA may not be able to increase the number of CDRs completed at all next year with the growing workloads in the DDSs. But this analysis shows that SSA desperately needs all of the resources from the Stimulus Bill, the FY 2009 Omnibus, and at least the \$11.6 billion proposed in the President's FY 2010 Budget Request to continue to make progress.

Reducing SSA's Costs to Oversee the SSI Program

SSA administers a very complicated Social Security and SSI program. The agency has been working to streamline policies to reduce administrative costs. We firmly agree this should be done so long as it does not disadvantage the public.

In addition, there are many areas where administrative costs could be saved through legislation. This is especially true of the SSI program which is very labor intensive and we therefore urge the Ways and Means Committee to consider legislative changes that would result in administrative savings. We offer a few key areas in the SSI program which are very labor intensive and if modified, could save us administrative dollars. These are:

1. Simplify the rules on Living Arrangements and In-kind support and maintenance.
2. Eliminate couple's benefits.
3. Allow payment of retroactive benefits of either Title II or Title XVI payments first in order to prevent delay of past due benefits. This proposal would greatly simplify the computation of offset computations.
4. Eliminate the Dedicated Account Provision and Installments.
5. Simplify the earned income provisions: Increase earned income disregard to reflect inflation and expand what is acceptable proof of wages.

There is one other area that we urge the Committee to examine thoroughly: That is the resource limit of \$2,000 for SSI for an individual and \$3000 for a couple. This limit has been in place for 20 years and severely discourages any savings for an SSI individual as well as practically guaranteeing a life of very minimal means and near poverty. An increased limit would also reduce a lot of resources development for Field Offices. It is important to note that the resource limit for Part D Medicare Income assistance is \$12,510 and \$25,020 for a couple.

Legislative Change to Assist In Reduction of the Disability Hearings Backlogs

Current law requires that 50% of all approved initial and reconsideration Title II disability cases and Title XVI adult disability and blindness cases be reviewed before a final approval is made. The intent of this was to lead to more consistency in approvals in all states as this review is completed by SSA (a Federal review) as opposed to being completed by the DDSs. However no more than 5% of the disapproved cases are reviewed. Thus, at least 95% of the denied cases are not reviewed. As a result, there is no early opportunity to prevent some cases from moving to the Hearing Offices. With an increased review of denied cases, some of these cases will be approved. This will also result in many claimants who have been denied benefits not having to wait nearly two years for a hearing. It will also save substantial administrative dollars in ODAR.

We believe that a truly random review of all initial and reconsideration disability cases should be implemented instead. The review would be equally split between approvals and denials. This increased investment in the disability area would reduce the hearings backlog, save administrative dollars, and prevent many unnecessary hardships for claimants. This revised review method might actually be less expensive in the long run as it could reduce the very high cost that often results from a hearing on a case.

The SSA of the Future

We firmly believe that SSA cannot stay a static organization. We believe that the agency should continue to invest in our systems to process our cases faster and reduce costs. We need to have information technology that is fully supported by an up-to-date National Computer Center. Allocating resources to replace the National Computer Center, which is nearing its capacity, is a wise investment.

SSA is also investing resources to improve our Internet product as the public demand for this product grows. We also think this is a wise investment.

We do believe the public should be given a choice in how they will interact with SSA. This can be in person, by phone, or via the Internet. In future years, we do anticipate a shift toward the public using online services more and more. SSA will need to constantly assess this as the agency considers its expensive infrastructure costs and the number and location of SSA offices. In the interim, there is a need to have an adequate number of offices in growth areas such as Texas (as cited earlier in this statement).

Recommendations

We have these key recommendations to improve services in SSA and stewardship of funds:

1. Approve at least the \$11.6 billion funding level proposed by the President for FY 2010.
2. Look at multiyear funding to accelerate the number of SSI redeterminations and CDRs completed to save billions of taxpayer dollars. It will take a number of years to work down this backlog.
3. Exclude SSA's administrative funding from any cap that sets an arbitrary ceiling on discretionary spending. There is a \$2.3 trillion trust fund for SSA to draw on for most of this funding.
4. Remove SSA's administrative funding from discretionary budget caps and provide a separate limit in the Budget Resolution.
5. Pass legislation that withholds funds such as stimulus funds from states that furlough DDS employees.
6. Pass legislation that would streamline labor intensive regulations that could save the agency millions of administrative dollars. This is especially true in the SSI program.
7. Pass legislation to ensure a more consistent and thorough review of approved and denied disability cases.

Conclusion

The programs SSA administers are vital to our nation. John F. Kennedy said this on June 30, 1961:

"It is with great satisfaction that I have signed into law the Social Security Amendments of 1961. They represent an additional step toward eliminating many of the hardships resulting from old-age, disability, or the death of the family wage earner. . . . A Nation's strength lies in the well being of its people. The social security program plays an important part in providing for families, children, and older persons in time of stress, but it cannot re-

main static. Changes in our population, in our working habits, and in our standard of living require constant revision."

While we are facing a very severe recession we all want SSA to do its very best to continue to serve our nation by ensuring all Americans receive the benefits they paid for or deserve on a timely and accurate basis.

We are very appreciative of your ongoing support for adequate resources for SSA. We certainly believe the American public has paid for and deserves to receive good and timely service from the Social Security Administration. **Consistent and adequate resources for SSA are essential to ensure this.** Increased investment in SSA is money well spent as the agency has a proven record of effectiveness and efficiency. In fact, from FY 2002 to FY 2008, SSA's productivity has increased by about 18.7 percent, which is an average of 2.7 percent per year. We look forward to your support for SSA funding in FY 2010 of at least the \$11.6 billion proposed by the President.

On behalf of the members of the NCSSMA and in support of the SSA Advocacy Group, I thank you again for the opportunity to submit this written testimony to the Subcommittees. NCSSMA members are not only dedicated SSA employees, but they are also personally committed to the mission of the agency and to providing the best service possible to the American public. We respectfully ask that you consider our comments and would appreciate any assistance you can provide in ensuring that the American public receives the necessary service that they deserve from the Social Security Administration.

Chairman TANNER. Well, let me, on behalf of the Members, thank all of you for your time and your attention to this matter. Let me assure you that your testimony will be gone over by the members and our staff in great detail because this Committee intends to be very active this year, and we may be asking you to come back in 6 months as we monitor what is happening.

This is, as I said at the outset, is a national problem that has dire consequences for real people, and your devotion to this cause is admirable, and the Committee wants to thank you.

Judge, you said something that struck me. I asked the commissioner when he was here if the error rate on electronic filing, was there was any data to support what I have to believe would be a higher error rate than if one who is making application can sit down and talk with a human being who is knowledgeable in these matters about it. His response was, if you were here, that they thought the error rate was about the same. My thought, if that is true, then maybe I don't have a concern.

But if it is not true, it seems to me that that is in itself clogging the system with inaccurate or erroneous applications that have to be pitched out before one can get to the merits of the case. Do you have a comment on that, sir?

Mr. BERNOSKI. As far as the errors in the application and the errors of the type that the commissioner referred to, by the time that claim gets to the administrative law judge level, we are at the end of the food chain. Those types of corrections have invariably been made in the file. So we are not being burdened with that type of problem.

But the electronic file does slow down the process as far as we are concerned in the way we handle the file. It takes longer to open up an electronic file than it does a paper file. It takes longer for the case to boot up when coming to the screen. It takes longer to turn a page electronically than it does to turn a page in a file. Also, it is more difficult to read electronic files. If you are going to—if a judge is sitting there or a clerk or any type of person sitting

there, reads from a screen all day long, that has an impact on your eyes; it has an impact on the back of your neck. All of these problems have impacted on us and, in fact, has slowed down our ability to handle those files.

Also sometimes the system just breaks down because there is so much traffic on the network that it can't handle it or it slows down considerably. All of these things have impacted us.

Now this e-polling is another problem that is going to have a dramatic effect on us, because that was a system that was implemented to pull the duplicates out of the file. Before, we had to do that manually when we had paper files. Clerical people had to go through and set up the case and remove the duplicates because we have an inquisitorial system. We get the evidence rather than the attorneys bringing them in. Now, electronically, if that system fails and we have to, in fact, kind of do it manually with an electronic system, it takes a much longer, longer period of time. And it takes about, I spoke with some of our people in our office before I left on Friday because I thought we would be talking about that today, And they said it takes about twice as long now with the electronic system as it did manually with the broken process.

Chairman TANNER. Thank you.

Mr. Warsinskey, do you have a comment?

Mr. WARSINSKEY. I think part of your question was directed at the Internet claims which the Commissioner was referring to. And he said that the quality on the Internet claims, what you called electronic claims, is really good. The study I think he was referring to, indicated a little bit better quality than a claim that is filed in the office. And the study that they did, did show that. The Internet claims are usually a little cleaner than the average case that we get in an office right now.

But the reason why the accuracy is good is because we review the cases very thoroughly. The claims representative reviews them before they are actually paid out or adjudicated. So that is why we have the good quality. We don't have any claims going through the Internet right now without some kind of review to make sure it is paid correctly.

Chairman TANNER. Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

I just have one or two questions.

Mr. O'Carroll, how much of the work at local offices and hearing offices is completed using the Social Security computer system that he says doesn't work?

Mr. O'CARROLL. Mr. Johnson, the vast majority of the work in SSA offices is done on computers. We are proponents of electronic service. We believe that using the Internet for applications is a wise use of technology. We are monitoring it all the time in terms of looking at the accuracy rate. We are finding it is very accurate. When a person is sitting down and filling out a form, they are putting a lot of thought into it. They think, they complete their application logically, and we find that that works very well.

To give you an example, years ago, when somebody was applying for a Social Security card, they would sit down with a claims rep with a paper form and go through it. The SS-5 would be completed, and then it would be transcribed to an electronic record. Now, with

the electronic SS-5 assistant, each step is electronically recorded. And then they ask for the applicant's identification. This is making the application process for a Social Security card easier and more accurate, and we applaud the system.

Mr. JOHNSON. Well, the system is, I mean, you have got old technology in that computer system. Is that causing a problem, and does it ever go down?

Mr. O'CARROLL. Well, to a degree, yes it is causing a problem. And that is one of the reasons for modernizing the system.

A lot of the front-end process, as an example, the SS-5 assistant, isn't being done using the mainframe. It is being done using a server, and then that data is put into the mainframe, which is the old technology. This is one of the biggest problems. The front end is using the modern technology, while the older COBOL program is used at the NCC. If the NCC was updated, the process would be much more streamlined and quicker.

Mr. JOHNSON. How about telling me what would happen in your opinion if there were a failure in the system?

Mr. O'CARROLL. Congressman, that is something that is of great concern to us. We have been looking at it a lot. We are very concerned. Regarding one of the questions earlier in the hearing, why has this degradation of the system just recently been identified? And it is quite significant. Our concern is that, if the system does go down, it is going to take a long time to bring it back up again. Yes, the records are kept. Yes, they are on tapes. Yes, they are in other locations. But it is going to be such a long process, and I think, as the Commissioner mentioned, if the tapes are brought to New Jersey, which is the current location, it takes about a week to 2 weeks just to bring in all the equipment, get it loaded, and get it running.

As everybody knows, and one of the reasons we are concerned, is that the daily process of SSA, which affects many Americans, would be suspended for several weeks. And then, when you think about all of these benefit claims, until that system is up, they will have to be taken on paper forms. Then all those papers have to be uploaded into the system. So I do believe that having redundancy, having a second site that is identical to the Baltimore site is necessary for all of us to be able to—

Mr. JOHNSON. If it went down at the end of the month, people wouldn't get their checks; is that true?

Mr. O'CARROLL. No, sir. They would get a check. We have looked into that. They would use records forwarded from Treasury the previous month. Maybe some deceased people would also receive checks. Maybe some people that needed a check wouldn't get one, but the vast majority would get a check based on the records of the month before from the Treasury Department. Mr. Johnson. So the Treasury has a second record; is that true?

Mr. O'CARROLL. Yes, sir.

Mr. JOHNSON. Okay. Thank you very much. Thank you, Mr. Chairman.

Chairman TANNER. Dr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman.

I don't know who to ask, whether it is Mr. Fell or Dr. Bernoski or Judge Bernoski or whatever. I am reading these cases that Ms.

Hathaway brought in here, and I think that if you put two or three or four reasonable people around the table reading the cases, even these one-paragraph synopses that are given to us, in almost every case, we would say, this person is eligible for disability benefits.

So when you tell me that there are 999 cases pending in Seattle for an average of 500 days, I ask myself, why is that happening? Explain to me—I mean, I was a witness. So I have been in your courts in the administrative law procedure on various cases. And what I don't understand is, are they held up because it is little pieces of paper that aren't there, and therefore, we don't go ahead with them, and we put them off another month? Is that what happens? Or is it that these are such difficult decisions—I mean, if you read the case of Ms. T was waiting 29 months for a hearing. She had been diagnosed with borderline intellectual functioning and epilepsy. While she was waiting for her hearing, she exhausted her time limit on TANF benefits, lost her income. Her mother used her income tax refund to prevent foreclosure on the house. It doesn't sound to me like there is any doubt that that woman is ultimately going to be judged disabled and eligible for benefits. So what is the hang-up in this system?

Mr. FELL. The first part of it, probably Judge Bernoski on the disability part of it.

Some of the hold-up is due to demographics. for instance, the Chicago region is so inundated where maybe the Philadelphia region and the San Francisco region are not. The Seattle region is heavily inundated.

Part of the problem is getting to the files. We do have a process where claims are looked at when they come in. And if a flag goes up, they are given to attorneys to look at to see if there is a possibility of an on-the-record decision. Maybe it only needs one more piece of evidence.

But what happens on a lot of these, I mentioned there are over 765,000 requests; of those requests, over 400,000 are awaiting preparation for the judges to see them. And that—what Judge Bernoski talked about the length of time it takes to prepare these for the judge, that can be 4 to 6 hours, depending on the size of the case. That is where the huge backlog right now is. If they are not caught at first through this screening process, where we will often look at cases where people are 50 or over, then when they are finally discovered is at the point that the file is prepared or from offices where we do get something from a congressional liaison stating that, wait a minute, this person has got a problem. Here is some updated medical.

So there are a number of things that can happen and we do have things in process to keep it from going that far. But there are so many cases in the system. If one gets through, they are not going to be discovered until they get to the point of preparation.

Now, as far as the issue on the type of disability and should that be approved, I am going to turn that over to Judge Bernoski, the actual medical part.

Mr. MCDERMOTT. We have a thing on welfare claims on Medicare—Medicaid claims, that if they don't, you know, happen in a certain number of days, they get paid anyway and they get money on top of it. They get the—the doctors get additional money and in-

terest because it hasn't been paid, right? What is the problem with just letting these cases through and reviewing them, and then, if there is one, you can call them back? Is it that you can't reclaim the money? Is that the problem? I don't understand. Because somebody set up this Rube Goldberg system to keep from paying benefits. There is no question looking at it, coming in here again and again, we hear the same thing we heard last year. Why don't you just—why doesn't the system let them through?

Mr. BERNOSKI. Well, I guess one of the process—reasons that we don't have the system that you described is that is not part of the regulation or the law. So we couldn't do it at least now.

But the fundamental problem is that our system is overloaded at this point. We just have more work than we can possibly handle. That is why we need more judges. We need more staff. We need more money, as has been said repeatedly during the course of this hearing.

Also, this is what we suggested in the course of our testimony, is that it would be helpful if we would have a mechanism in the system to look at the case more formally before it gets to the administrative law judge hearing. The Federal concept of that was part of DSI, where before the case would come to the administrative law judge, a person would have a function within the process that would look at that case and review it and determine whether it could be paid on the record, maybe a little bit of additional evidence would be needed to pay that case, but to pull all of these cases out of the system as early as possible and not allow them to move and progress until they get to the administrative law judges.

We are doing it the slowest and most expensive way, because we are hearing all of these cases at the back end of the process, as Mr. Lewis said, at the back end of the process, with the employees that are making the most money—administrative law judges are probably one of the highest paid people in the system. And so we are—that is the type of system that we have put together where we are hearing the cases later by the more highly skilled and more highly paid people. Where we suggest there should be something earlier in the process to pull some of these cases out. That would help. That would help, we believe.

Mr. MCDERMOTT. So you are saying it needs a total rewrite of the regulations of how the system works? The system is dysfunctional?

Mr. BERNOSKI. It doesn't take a total rewrite of the regulations. We could do a Federal system like we have now or we could build on what we have. We have staff attorneys and attorneys in the program right now where we could just expand on what we have got and give them that additional function where they would be doing this work earlier in the process.

We have a senior attorney program now which does some of that work, but the problem with the senior attorney program that we have is that they look at the case and either—they either award it or it goes forward. The type of benefit from their expertise to help develop the case is not done. So the skill that they have and the knowledge that they have acquired and the analysis that they have put into that case is not documented to be passed onto the administrative law judge to help shorten the administrative law

judge's analysis. In fact, we are doing it twice under this current system.

Mr. MCDERMOTT. Thank you, Mr. Chairman.

Chairman TANNER. Dr. Linder.

Mr. LINDER. Thank you, Mr. Chairman.

General O'Carroll, you mention in your testimony that they are moving to—you said the law units cost about \$24,000 each, and the video conferencing on the desktop video would be about \$8,000 each?

Mr. O'CARROLL. Yes, Mr. Linder. We are doing an audit right now taking a look at the effectiveness of it, whether the investment of putting in the video units is worth it. It is ongoing now. But, yes, it is expensive, and we are monitoring the costs.

Mr. LINDER. A quick check of the Internet finds that a nationwide company offers a video conferencing camera that starts at \$9.99 along with a free video conferencing calling to other network users.

What do you think of that, Mr. Bertoni?

Mr. BERTONI. I am not aware of that particular instance, but I guess your point is that, to the extent if they can find cheaper and as useful tools to get this job done, I think that should be the case. I think there are examples in this agency and others where, through the procurement and contracting functions, that hasn't always been the case. But I would—hearing that, I would say if there is technology that is similar, does the same job, and it is cheaper, that should be looked at closely.

Mr. LINDER. The last laptop I bought, it came with the laptop at no additional cost. Thank you all very much.

Thank you, Mr. Chairman.

Mr. FELL. May I make one comment on that, please? I am actively involved in that. I have a number of video units in my office. We are installing a video spoke in Indianapolis, plus I am putting a desk top video in Madison, Indiana, shortly. We have a closed net IP. We have security issues, privacy issues.

Also with the administrative law judge, the clarity of this system has to be as close as it can to an in-person hearing. So before we go on the cheap to put more in, we really have to make sure that this is the type of technology that we can use. The technology we have now on some of the 58-inch flat screens we are getting in is extremely clear. The desktop videos, true they are expensive, but the clarity is amazing. My chief judge has one in his office. He holds remote hearings with it, and he is very impressed with the clarity of it. So I don't think we want to sacrifice the clarity and the ability of the judge to view what he needs and also the privacy, in making sure we have a closed net system. It would have to be, I think, very careful analysis before we went out and tried to contract outside. That would be my opinion.

Mr. LINDER. I think if you looked closely, you could buy these things pretty secure and very large for a whole lot less than \$24,000.

Thank you, Mr. Chairman.

Chairman TANNER. Your timing is impeccable. We have three votes, and we were supposed to be out of the room at 1:30.

May I, again, thank all of you very much. Your testimony will be carefully read. And if we have follow-up, I assume we may contact you with respect to any question we may have about your testimony.

Thank you, Ms. Hathaway.

Thank you all for being here.

The meeting is adjourned.

[Whereupon, at 1:31 p.m., the Subcommittee was adjourned.]

[Questions for the Record follow:]



May 29, 2009

The Honorable Sam Johnson
Ranking Member, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Johnson:

Thank you for your April 9, 2009, letter requesting additional information to complete the record for the "Joint Hearing on Eliminating the Social Security Disability Backlog," held on March 24, 2009. Enclosed you will find the answers to your questions.

I hope this information is helpful. If I may be of further assistance, please do not hesitate to contact me, or your staff may contact Angela Arnett, our Acting Deputy Commissioner for Legislative and Regulatory Affairs, at (202) 358-6030.

Sincerely,

Michael J. Astrue

Enclosure



May 29, 2009

The Honorable John Linder
Ranking Member, Subcommittee on Income
Security and Family Support
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

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I hope this information is helpful. If I may be of further assistance, please do not hesitate to contact me, or your staff may contact Angela Arnett, our Acting Deputy Commissioner for Legislative and Regulatory Affairs, at (202) 358-6030.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. Astruc', written over the printed name.

Michael J. Astruc

Enclosure

**Questions for the Record Subsequent to the March 24, 2009 Hearing
Before the House Committee on Ways and Means
Subcommittees on Social Security and Income Security and Family Support**

1. The President's Fiscal Year 2010 budget (p.18) says the Administration would like to "work with Congress to revisit asset limits for Federal means-tested programs." In the last Congress, senior Democrat Representative John Conyers introduced a bill (H.R. 3172) that would repeal asset limits for the Supplemental Security Income (SSI) program under the Ways and Means Committee's jurisdiction. Under the Conyers bill, any disabled person who currently has a low income would be eligible for SSI, regardless of how much he or she has saved in the bank or in stocks, regardless of how big a house he or she might own, and regardless of how much his or her car costs.

Does the Social Security Administration (SSA) support the policy in the Conyers bill? If not, what asset limit reform policy does the Obama Administration support, specifically with regard to the SSI program? Also, how many more SSI recipients would there be if asset limits were eliminated? How much would that cost?

We fully support the Administration's proposal to revisit asset limits for Federal means-tested programs. While we have not yet taken a position with regard to the specific provisions in H.R. 3172, we note that during the last 20 years, the SSI resource limit has not been raised and there have been no significant changes in the types or amounts of resources excluded from consideration.

Because we have limited data on the number of persons who might become eligible for SSI benefits if the asset test were completely eliminated, we would need to develop better data to fully explore revising these asset limits.

2. A January 8, 2009 Office of Management and Budget (OMB) report entitled "Improving the Accuracy and Integrity of Federal Payments" indicates that 12 programs accounted for approximately 90 percent of reported improper payments for a total of an estimated \$65 billion in fiscal year 2008. Included in this "top 12" list is the Social Security Administration's (SSA's) SSI program with estimated fiscal year 2008 improper payments of \$4.5 billion -- a rate of over 10 percent. This 10 percent improper payment rate is up substantially from the fiscal year 2004 rate of 7.4 percent. What are the main causes of these improper payments, and what is the SSA doing to reduce the number of improper payments? What can Congress do to help with this effort?

The amount and number of incorrect payments have grown primarily because we have had to reduce the number of redeterminations due to a lack of resources. As discussed in my testimony, we are now beginning to increase the volume of redeterminations. In FY 2009, we will perform 1,711,000 redeterminations, an increase of 490,000 over the FY 2008 level. As part of a government-wide effort to reduce improper payments, the FY 2010 President's Budget includes a significant increase in our funding for program integrity activities, including redeterminations. In FY 2010, we plan to process 2,322,000 redeterminations, which would be over 600,000 more redeterminations than we expect to complete in FY 2009.

In FY 2008, the two major reasons for improper payments in the SSI program were recipients' failure to fully report wages that they earned or funds that they held in financial accounts. Between FY 2004 and FY 2007, these types of improper payments grew to \$400 million and \$500 million, respectively.

To address these major causes of payment error, we have a number of initiatives underway that will permit us to obtain information we need to pay beneficiaries correctly. One such initiative is the Telephone Wage Reporting project, which permits working SSI recipients to easily report wages. We are gradually increasing the number of participants in the program. Another initiative is the Access to Financial Institutions project in which we access account information directly from the financial community. This project is currently operating in three States: California, New Jersey, and New York. The FY 2010 President's Budget includes language which would allow us to expand asset verification initiatives such as the Access to Financial Institutions project, if these projects are found to be as cost-effective as redeterminations.

3. **The President's budget request included an adjustment in the overall allocation for annual appropriations for program integrity reviews; but experience tells us that these allocations aren't ironclad, particularly when funding is provided through a continuing resolution or if some funds are later rescinded. Have you talked to OMB and the appropriators about some type of no-year capital budget to fund program integrity efforts or needed technology investments?**

Our FY 2009 appropriation allows us to begin to reverse the overall decline in program integrity reviews. The FY 2010 President's Budget provides us with \$758 million to further increase our program integrity efforts. These efforts will further ensure that the Government spends tax dollars efficiently and that we correctly pay benefits only to those persons who are eligible.

In FY 2009, we plan to process 1,079,000 periodic CDRs, including 329,000 medical CDRs. The President's budget allows us to maintain the higher level of medical CDRs in FY 2010. We also plan to process 2,322,000 SSI redeterminations. Even with this increase, we will still perform fewer program integrity reviews than we did earlier in this decade.

We have had tight budgets in the recent past, and when resources are limited, we must balance our program integrity efforts against maintaining service to the public. Sustained, adequate, and timely funding is vital to ensuring our ability to meet both our important service and stewardship commitments. The additional funding provided by Congress in FY 2009 is helping us make a positive difference in all of the work we do.

Regarding a no-year capital budget to fund needed technology investments, we have considered this and are extremely grateful for the additional \$500 million in no-year funding for a new National Computer Center. We look forward to discussing with you how the President's Budget will help us with other necessary investments to modernize our information technology infrastructure and provide 21st century customer service to the public.

4. Please explain how average hearing processing time is defined. Why is there so much fluctuation in the hearing offices' numbers?

We define average processing time (APT) as the average number of calendar days from the hearing request date to the disposition date for all dispositions during a reporting period. Differences in data can occur because we may be calculating APT for different reporting periods. For example, the APT for a certain month usually would be different than the APT for FY to date, i.e., calculating APT for all dispositions from the beginning of the fiscal year to the date the APT is calculated. The best barometer for APT is the fiscal-year-to-date calculation. In addition, the APT varies from hearing office to hearing office because some offices have more aged cases than other offices. Thus, offices with high numbers of aged cases due to large backlogs and offices that assist other offices in processing their aged case workload tend to have higher APTs.

Due to the many obstacles to expansion of the hearing offices, the location and size of the hearing offices is essentially the same as it was twenty years ago, even though the demographics of the claimant population have changed dramatically. We have undertaken with our recent expansion to take changed demographics into account, which is why the expansions are focused in the Rust Belt and Southwest.

5. Last year, for the first time, your Chief Administrative Law Judge (ALJ) set a production expectation for the Agency's 1000+ judges. He asked each judge to process between 500 and 700 cases during the year. On average, how many cases is that per day? How did your Chief Judge arrive at this number? What are you doing about those that failed to achieve the goal?

The Chief Administrative Law Judge (ALJ) requested all ALJs to process 500–700 dispositions each fiscal year. Since there are approximately 250 work days in the fiscal year, each ALJ would need to decide, on average, between 2 to 2.8 cases per work day. We used personal experience and historical data to set the goals. The Office of the Inspector General (OIG) performed an independent review in February 2008 and agreed that this ALJ productivity level was reasonable. Combined with other backlog initiatives, we will eliminate the hearing backlog by 2013 if the ALJs meet these goals.

We currently use benchmarks and timeliness measures to address ALJ performance issues. We have established benchmarks for processing cases through all major steps, from receipt of the hearing request to a decision. We counsel ALJs whose case processing takes longer than the benchmarks. In addition, we have formed a cross-component workgroup to review issues related to ALJ performance, including identifying the steps we can legally take to establish an acceptable productivity level. Until we complete this review, we will continue to address issues related to ALJ productivity based upon timeliness.

6. Data provided to Representative Tiberi regarding the Office of Disability Adjudication and Review in Columbus, OH suggests the number of pending disability cases has increased from FY08 to FY09. Pending cases have increased from 8,461 in FY08 to 9,640 in FY09 and the average number of cases per ALJ has increased from 826 in FY08 to 945 in FY09.

The current average annual ALJ production expectation of between 500-700 cases is significantly lower than the average number of cases pending per judge in the Columbus office. When will the number of pending cases in the Columbus office decrease? What resources are being used to help this office operate more efficiently, and are there any plans to add more Administrative Law Judges (ALJs) and/or other staff to increase case processing capacity?

Representative Tiberi accurately cited the data for the Columbus hearing office. The office ended FY 2008 with 8,461 cases pending, and at the end of February 2009, there were 9,640 cases pending. Also, at the end of February, there were 944.60 pending cases per ALJ, reflecting an increase over the 826.10 pending cases per ALJ at the end of FY 2008.

The Columbus hearing office began receiving assistance from the Springfield, MA hearing office in 2008 as part of our Service Area Realignment initiative. The Springfield hearing office is responsible for hearing cases from the Mansfield, OH, and Wooster, OH, service areas, which were previously heard by the Columbus hearing office. This fiscal year, the Columbus hearing office has also received assistance from the San Francisco Screening Unit.

In addition, we plan to establish a new hearing office in Toledo, OH, in FY 2010, which will service areas currently handled by the Columbus hearing office. We will closely monitor the Columbus hearing office's situation and if necessary, may transfer additional cases out of the Columbus hearing office or realign the Columbus hearing office's service area.

In FY 2008, we placed two additional ALJs in the Columbus hearing office, bringing the total number of ALJs to 10. The office has physical capacity for only 10 ALJs, so we cannot place any additional ALJs in that office this fiscal year. However, the hearing office plans to fill one additional support staff position this fiscal year.

ALJ productivity in Columbus is currently near the lowest in the country and we are hopeful that additional resources and counseling will improve their productivity.

- 7. In your written testimony, you said that you might need 1,400-1,450 ALJs to handle the increasing hearings backlog. What can the Office of Personnel Management (OPM) do to help you hire ALJs?**

The Commissioner recently spoke at length with OPM Director Berry about the short-term problem in hiring ALJs and our long-term issues, and asked that the register of ALJs be refreshed as soon as possible. The Commissioner and the Director have a shared understanding of the challenges that must be addressed and share a commitment to expeditiously addressing these challenges. In ongoing dialogue with OPM staff over the last several months, we have asked OPM to make three changes to the schedule for ALJ certification to better meet our needs.

First, OPM refreshed the register of eligible ALJ candidates by readministering the examination in 2008 and adding new names. On March 6, 2009, we received a certificate of eligible ALJ candidates.

Second, we have alerted OPM of our plan to hire 400 ALJs, which would bring the total to 1,450 ALJs. In addition, other agencies would hire ALJs from the same register. We have already requested and obtained certificates with enough highly-qualified candidates to enable us to hire about half of the 400. We will continue to work with OPM to ensure that on an ongoing basis the ALJ register contains enough qualified candidates to meet our needs.

Third, we asked OPM to refresh the register no later than November of each year. Doing so would allow us to hire ALJs early in a fiscal year and ensure that the newly-hired ALJs are productive through a greater portion of that fiscal year than if we had to hire ALJs later in that fiscal year.

Finally, OPM has the authority, where appropriate under the applicable statutory and regulatory criteria, to grant dual compensation waivers so that annuitants may be reemployed without salary offset. OPM recently gave us dual compensation waiver authority for specific mission-critical positions which support the work of the ALJs. The authority expires December 31, 2010, and is to be used to meet staffing needs related to the American Recovery and Reinvestment Act. Under our dual compensation waiver authority, reemployed annuitants must perform duties that directly or indirectly reduce the disability and retirement claims backlogs. Alternatively, they must train and mentor recently hired, reassigned, or promoted staff who performs those duties. OPM previously has granted dual compensation waiver authority to reemploy retired ALJs under appropriate circumstances.

8. **Are electronic disability folders being used by all of the hearing offices? Would you say that the use of technology, specifically the use of computers, is a cornerstone of the hearings business process? Are all judges computer literate? If not, how many aren't and what impact does this have on the rest of the employees in that judge's office? What's being done to bring these judges into the 21st century?**

Yes, all hearing offices use electronic disability folders. Electronic folders provide reliable accessibility and allow for more efficient workload processing as work can be moved "seamlessly" among components. It became abundantly clear during our response to Hurricane Katrina that maintaining electronic rather than paper files was a much more efficient, and safer, way to do business. We house the electronic files on remote servers—away from office locations where calamity or natural disasters may damage them.

Our employees must have certain computer skills to function in the electronic case environment. For example, we use our Case Processing and Management System to provide information and to move work through the electronic business process. All new ALJs receive electronic folder training just as all judges received the training when we introduced electronic folders. As in any organization, our employees, including our ALJs, have varying degrees of proficiency in using these tools.

With the impending rollout of the standardized electronic business process, we will provide additional "hands-on" training. Currently we are surveying all ALJs to determine the level of computer proficiency within the ALJ corps. The results of this survey will help determine what additional training is needed to assure that all ALJs can proficiently process our electronic

workloads. We do agree, however, that judges who refuse to use electronic disability folders are slowing justice for claimants. We are actively taking steps to address this issue.

9. **Page 4 of your written testimony includes some stunning numbers about the workloads you face. For example, the SSA verified about 1 billion Social Security numbers (SSNs) last year, which is an amazing 270 times the number of retirement and survivor claims you processed (3.7 million). How much of that Social Security number (SSN) verification caseload is automated, as opposed to comprising a significant employee workload? On page 21 of your testimony, you discuss how you are developing strategies to reduce SSN related workloads. Please provide more specifics on these efforts, including what resources they might free up for other work.**

The vast majority of the Social Security number (SSN) verification workload is automated. However, mismatches resulting from verification processes generate significant work for our field offices.

Currently, State vital records agencies in all 50 States, plus the jurisdictions of New York City, the District of Columbia, and Puerto Rico, participate in the Enumeration at Birth (EAB) process. EAB, which began as a pilot in 1987, allows parents to request SSNs for their newborns as part of the hospital birth registration process. Approximately 96 percent of SSN cards for newborns are issued via EAB.

Our Quick, Simple, and Safe SSN initiative focuses on using automation to improve service and free up field office resources in the enumeration process. Included in that initiative are:

- **Decrease the Demand for Replacement SSN Cards:** As part of this effort, we are promoting the use of our electronic services and data exchanges, as appropriate, to minimize field office traffic. For example, we have verification systems available to, and data exchanges with, the States and the U.S. military, yet State agencies and military recruiters frequently send persons to our field offices to apply for replacement Social Security cards when they could verify the SSNs on-line more quickly and more easily. Increasing the use of our electronic verification systems would result in decreased demand for replacement Social Security cards.
- **Use Video Conferencing Technology:** In 2008, we began to test the use of video technology to offer persons—who would otherwise travel long distances to reach a field office—the convenience of filing for replacement SSN cards via video. We have used video technology to conduct claims-related business in the Denver region for over 5 years. In October 2008, we began a pilot in North Dakota to use video technology in the SSN application process and will expand the pilot to Wyoming in April 2009 in order to gather sufficient information to analyze the pilot's success.
- **Explore On-Line Replacement Cards:** We are developing a process that would allow applicants to complete SSN replacement card applications online. After we have developed an authentication protocol, we will be able to issue some cards without the applicant visiting a field office. Other applicants will still be required to submit documentation by mail or in person at a field office or card center.

- **Implement Signature Proxy for SSN Cards:** Signature proxy allows applicants for original SSNs and replacement SSN cards to apply for the card without providing a "wet" signature, thus eliminating paper from the SSN application process. The new, redesigned SSN application system called SSNAP will use signature proxy. We will begin the SSNAP phase-in in August 2009. Signature proxy is critical to the implementation of on-line replacement SSN cards.
- **Expand Enumeration at Entry (EAE):** We are negotiating with the Department of Homeland Security (DHS) to expand the EAE process, in which DHS and the Department of State collect enumeration data and take SSN applications as part of the immigration process.
- **Research Auto Cards at Marriage/Divorce:** We are researching the feasibility of automatically issuing corrected SSN cards at marriage and divorce. If implemented, the project would involve Federal/State collaboration in which State agencies electronically collect information, such as name changes, necessary to update our SSN records. This project would expand the role of the State vital records agencies.

10. As Commissioner, we know a key priority of yours is ensuring as many of your employees as possible are directly serving the public in order to address the increasing number of new and backlogged claims.

- **How many people deliver direct service to the public?**
Presently, 55,692 employees (or 86 percent of all employees) are in direct service positions.
- **How many people support those delivering direct service?**
We have 8,919 employees (or 14 percent of all employees) who support the direct service employees.
- **How many people work in Headquarters?**
A total of 8,089 employees (or 13 percent of all employees) work at headquarters.
- **How many people work in Regional Offices?**
A total of 1,948 employees (or 3 percent of all employees) work in regional offices.
- **Are you hiring those who directly serve the public (through field offices, hearing offices, phone centers, etc.) at the same rate as Headquarters and other support personnel?**
No. We are hiring for direct service positions at a higher rate than support staff positions. Ninety-four percent of our new hires are in direct service positions.
- **What are you doing to ensure as many of your employees as possible are serving the public?**
Our number one priority is to hire front-line staff who directly serve the public. However, those front-line employees cannot provide the best possible service without sufficient support staff to develop the service delivery tools required to get the work done and to get it done with greater efficiency. Support staff are critical in our efforts to coordinate work,

improve and expand existing automation, and continue development of our telephone and Internet services. Support staff employees also work to improve our in-office service delivery by conducting the analysis to streamline policy, establish Social Security Card Centers, and provide self-help computers and video service delivery. Support staff also conduct administrative tasks, such as processing personnel actions, writing policy instructions, and carrying out budget oversight.

11. The incoming request did not include a Question #11.

- 12. While over 53% of the SSA staff is eligible to retire by 2017, new OPM estimates indicate 2,100 federal employees expected to retire between 2009 and 2011 will delay retirement due to the economy. How will the SSA's workforce be impacted? Does this change your hiring plans? The current Field Office Management Association President has indicated that this delay provides an increased opportunity for mentoring new employees. Does the agency have plans to improve service delivery training given the larger numbers of experienced staff available?**

Our statistics show that the downward trend in the U.S. economy has had minimal effect on retirements in our workforce. Our retirement projections have been within the expected range. Therefore, we do not anticipate that OPM's estimate of delayed retirements across the Federal Government will have a significant impact on our agency.

We base our hiring plans on our budget, on the expected level of our workloads, and on the number of employees whom we anticipate will leave the agency. While the number of employees retiring in FY 2008 decreased slightly compared to the previous 4 years, our workload demands have steadily increased. This year, we plan to hire more employees than we anticipate losing in order to meet our rising workload demands.

Mentor support and on-the-job training are vital to the success of our employees. We mentor all newly-hired employees according to their needs.

In FY 2009, we will begin developing a pilot for transforming entry-level training for direct service employees. We plan on using different training modalities such as Video on Demand, hands on learning, online lessons, and Interactive Video Training. Our plan will increase the use of technology for training as well as address the learning styles of four generations of employees working at our agency.

- 13. State Departments of Motor Vehicles are moving in the direction of promoting online customer service by charging a small fee for people who continue to seek face to face services. Is that something the SSA is considering? What is the SSA doing, and what options are you considering, to allocate the SSA's resources to deliver efficient customer service?**

We have no plan at this time to charge fees for our program-based services, but we understand that Congress may need to consider this option for certain services. We currently charge fees for the work we do to respond to non-program requests by third parties, such as insurance companies requesting disability information or mortgage companies requesting Social Security

number verifications.

In addition to placing employees in key locations, we also have a broad array of initiatives under way to improve our customer service and make it more efficient. These initiatives include efforts to further automate complex workloads, to streamline policies and procedures, to create new and improved Internet and telephone service options, and to improve training for our front-line service employees. We are also using innovative technologies within our field offices to improve customer service. For example, in some offices we have placed televisions in waiting areas to inform the public about our services. In other offices, the public has the option to conduct business on-line with a self-help computer that links to our Internet services, rather than waiting for an available customer service representative. Additionally, Video Conferencing Technology, in field offices and at third party locations provides claims-related service to customers in remote areas and helps handle spikes in office visitor traffic.

14. How do the SSA's technology costs per employee compare with other similar industries? Are there activities that the SSA could automate with relative ease that would free staff resources but due to other priorities have not been done? If so, what are they? Please explain how automation requests for the Agency are prioritized.

In FY 2008, the average information technology (IT) cost per employee was \$13,706.¹ The December 15, 2008, Gartner paper "IT Key Metrics Data 2009: Executive Summary" reports average IT spending per employee of \$24,823 for the insurance industry and \$24,391 for the banking and finance industry.

We focus our automation efforts on major projects requiring substantial IT investments, such as:

- automating the disability claims process;
- developing web-based applications that will increase our ability to provide services over the Internet;
- initiating seamless processing, which will integrate data collection, development, and adjudication; and
- developing health information technology to request, receive, and review health records.

The Information Technology Advisory Board (ITAB) governs the agency's IT investment decisions. The ITAB is chaired by the Chief Information Officer and is composed of the Acting Deputy Commissioner of Social Security, the Chief of Staff, all Deputy Commissioner-level executives, and other executive staff. Its primary responsibilities include prioritizing all requests for automation. The driving forces behind our process include, but are not limited to, return on investment, legislative and court mandates, and audit findings and recommendations.

A request for automation starts as a proposal. Lower level review panels, known as "portfolio teams," review and evaluate the proposals for their anticipated return on investment and to ensure that they will promote the goals and objectives in our Strategic Plan. The portfolio team passes its recommendations to the ITAB for its consideration. The ITAB meets at least four

¹ We computed this per employee cost by dividing our total FY 2008 IT budget (\$1,074,204,523) by the total number of full-time, part-time, and State disability determination service employees (78,376).

times a year to create, and then modify, a two-year IT plan based on portfolio team recommendations and to make other IT investment decisions.

- 15. At the hearing, several individuals mentioned the SSA's need for additional resources to hire and train more workers. The following is from a February 9, 2009 SSA Inspector General document: "We determined that on average 1,450 out of 71,000 SSA employees (approximately 2 percent) had instances of AWOL [absent without leave] each year from 2005 to 2007." Is this a real problem? What steps have you taken to ensure current SSA employees are actually showing up for work and putting in a full and productive day on the job?**

We believe the use of AWOL in our agency is not a problem considering the total number of hours worked by our employees compared to the total number of AWOL hours. Our employees work over 135 million hours each year, and approximately 100,000 hours are charged to AWOL. Thus, AWOL hours represent about 0.07 percent of total hours worked.

The February 2009 Inspector General's report stated that employees are charged AWOL for a variety of reasons that fall under three main categories: 1) employees who fail to request leave properly, 2) employees who essentially abandon their positions with no intention of returning to work, and 3) employees who are legitimately ill and have exhausted all available accrued leave, donated leave, and entitlements under the Family and Medical Leave Act.

We continue to address this important human capital issue with managers. Through ongoing training, such as Personnel Management Workshops, provided throughout the year, we advise managers on the various types of leave, proper leave usage, and related discipline to ensure the consistent and accurate application of leave policies agency-wide. In addition, our human resources professionals routinely advise supervisors and managers on methods to deal with employees who have leave-related problems, from the first time an employee fails to comply with leave rules through progressive discipline for AWOL. We also provide information on personnel issues through our online websites as well as Interactive Video Training broadcasts on such topics as "Effective Leave Management." The broadcasts are available to all supervisors nationwide through our websites as well as by Video on Demand.

- 16. In your oral testimony, you said that the error rate of online applications was not significant. What is the accuracy rate of claims filed online as compared to claims filed in a Social Security office?**

We track the accuracy rate of claims by determining whether payments awarded in the application process are accurate based on our policies and procedures. In FY 2008, the overpayment dollar accuracy rates were 99.31 percent for field offices and 98.66 percent for Internet claims. The FY 2008 underpayment dollar accuracy rates were 96.84 percent for field office claims and 96.89 percent for Internet claims. The accuracy rate differences between field offices and Internet claims are not statistically significant. The FY 2008 Internet accuracy data do not include claims filed through iClaims, the new online Social Security benefit application, which was not operational until December 2008.

- 17. We are very concerned about the deteriorating condition of the National Computer Center (NCC) and your ability to recover all the data you need to process claims and issue checks in a timely manner after a disaster. What is the current and planned backup strategy for the SSA's computer system?**

If the NCC fails, there would be little loss of information, and beneficiaries would continue to receive benefits.

We currently maintain disaster recovery capabilities using a commercial hot-site recovery location. Each year we test the process and procedures necessary to recover our IT resources and data. As our data resources continue to grow, eventually the use of a commercial recovery site will no longer be feasible. Because of this limitation, we began construction of the Secondary Support Center (SSC) and initiated the Information Technology Operations Assurance (ITOA) project.

We plan to move part of the NCC's information to the SSC beginning this month. We will continue to create multiple backup copies of critical data on a daily basis. One copy will remain onsite within the NCC, and the remaining copy will be shipped offsite. Thus, should the NCC be damaged or destroyed, the most that would be lost is the last 24 hours of data.

Under the ITOA project, we will copy the data resources of the NCC and the SSC to each other daily. We will equip each site with computing capacity that will allow it to assume the service delivery requirements of the other site should there be a failure. The goal is to provide for recovery of a failed data center within 24 hours and with no more than 1 hour's data loss. The ITOA project is currently underway and on schedule for completion in calendar year (CY) 2012.

While the ITOA project moves toward completion, we are rapidly increasing the SSC's capability to provide additional protection for a loss of the NCC. We will add capacity to the SSC in CY 2009 to allow it to support data recovery operations for the NCC. We will continue to use the commercial hot-site until we can upgrade the SSC and test the recovery process to ensure all critical systems and data are protected.

- 18. You have been given substantial funds to establish a new NCC. What is the timeframe for its completion? Do you have a cross-component response team ready to respond to inquiries from the General Services Administration and OMB? What can be done to expedite this process and how can Congress help?**

We are working with the General Services Administration (GSA) to establish an accelerated project plan to complete construction of the new NCC by October 2013. We project the information systems equipment set-up and integration to be phased in over an 18-month period following construction.

We will work closely with GSA during all aspects of the facility's construction. As integral members of GSA's project team, we provide specific facility infrastructure requirements based on Uptime Institute's Tier 3 standards for data centers and will ensure the building accommodates our IT infrastructure needs for the next 15-20 years.

We oversee all work done by GSA and its contractors through all phases of our construction projects; the new NCC, which we are referring to as the National Support Center, is no exception. Both we and GSA have assigned some of the most highly qualified project managers to the project team. Our employees on the project include Electrical Engineers, Mechanical Engineers, Fire Prevention Engineers, and IT Specialists who participated in the design and construction of the SSC. They have been working on an accelerated schedule for this project since February, when we received the American Recovery and Reinvestment Act funds. In addition, GSA hired specialized construction management consultants and will hire IT consultants to assist on the project.

We appreciate your offer to help, and if we identify any obstacles that we need your assistance to overcome, we will notify you immediately.

19. Please provide the following information for each union that represents employees at the Agency. Also, please provide the number and percent of employees not represented by unions and the positions they hold.

• **The number and percent of employees represented.**

Four unions represent our employees: the American Federation of Government Employees (AFGE), the International Federation of Professional and Technical Engineers (IFPTE), the National Federation of Federal Employees (NFFE), and the National Treasury Employees Union (NTEU). The following chart shows the number of bargaining unit employees represented by each union.

Union	Number of Bargaining Unit Employees Represented	Percent of Total SSA Employee Population
AFGE	47,849	74.3
IFPTE	995	1.5
NFFE	38	0.1
NTEU	1,025	1.6
TOTAL	49,907	77.5

• **Please provide the number and percent of employees not represented by unions and the positions they hold.**

There are 14,465 employees who are not represented by unions. These employees represent 22.4 percent² of the total employee population. They are divided into two categories:

- There are 851 employees who would be eligible for bargaining unit coverage based on their duties, but who are not represented because they work in offices with no union representation (i.e., in offices where no union has won an election to become the representative of the employees in the office). These employees represent 1.3 percent of the total employee population.

² This number and the 77.5 percent above do not add up to 100 percent because of rounding.

- There are 13,614 employees who are ineligible for bargaining unit coverage based on the duties they perform. These employees represent 21.1 percent of the total employee population.
- The number who work full-time on union activities (and number of hours worked by year for the last 5 years, including cost).

The following chart breaks out, by union, the number of full-time union representatives, the hours they worked, and at what cost.

YEAR	FULL-TIME UNION REPRESENTATIVES	AFGE	IFTPE	NFFE	NTEU
2004	Full-Time Union Representatives	149	2	0	3
	Hours Worked	218,968	2,601		4,581
	Cost	\$9,133,021	\$112,225		\$191,045
2005	Full-Time Union Representatives	122	4	0	4
	Hours Worked	178,645	5,659		6,145
	Cost	\$7,721,538	\$244,577		\$266,533
2006	Full-Time Union Representatives	12	4	0	4
	Hours Worked	19,200	5,863		6,207
	Cost	\$922,553	\$201,727		\$258,224
2007	Full-Time Union Representatives	12	3	0	5
	Hours Worked	19,167	4,370		7,219
	Cost	\$938,289	\$213,926		\$353,394
2008	Full-Time Union Representatives	12	1	0	4
	Hours Worked	20,600	1,480		4,855
	Cost	\$1,046,578	\$75,191		\$236,547

- The number who work part-time on union activities (and the number of hours worked by year for the last 5 years, including costs and the FTE of that total number).

The following chart breaks out, by union, the number of part-time union representatives, the hours they worked on union business, the cost to the agency, and the total number of full-time equivalents (FTEs).

YEAR	PART-TIME UNION REPRESENTATIVES	AFGE	IFTPE	NFFE	NTEU
2004	Part-Time Union Representatives	1,513	149	1	21
	Hours Worked	135,451	12,960	53	13,712
	Cost	\$5,648,804	\$540,855	\$2,210	\$571,841
	FTE	65.12	6.24	0.03	6.59
2005	Part-Time Union Representatives	1,502	78	1	18
	Hours Worked	138,229	10,807	113	8,756
	Cost	\$6,017,692	\$467,086	\$4,864	\$378,438
	FTE	66.94	5.20	0.05	4.21
2006	Part-Time Union Representatives	1,356	77	1	18
	Hours Worked	140,097	10,857	256	9,015
	Cost	\$6,731,593	\$521,663	\$12,301	\$433,187
	FTE	67.53	5.22	0.12	4.33
2007	Part-Time Union Representatives	1,366	78	2	18
	Hours Worked	172,093	11,897	71	8,100
	Cost	\$8,424,532	\$582,398	\$3,476	\$303,021
	FTE	62.74	5.72	0.03	2.98

2006	Part-Time Union Representatives	1,280	85	1	14
	Hours Worked	178,008	17,003	64	7,332
	Cost	\$8,043,554	\$653,834	\$3,252	\$372,591
	FTE	85.58	8.17	0.05	3.53

- An overview of how agreements are negotiated and when they are due for renegotiation.

The current SSA/AFGE National Agreement expires August 15, 2009. The agency's management team continues to prepare for the negotiations based on input from all agency components. Both parties have officially notified each other of their intention to renegotiate the existing National Agreement. Ground-rules negotiations are scheduled to begin on June 2, 2009. Historically, term negotiations with AFGE have taken between 12 to 15 months.

We are also preparing for the upcoming term negotiations with NTEU. We have two contracts with NTEU. One contract covers Office of Disability Adjudication and Review attorneys in the regions and expires on January 31, 2010. The other agreement, which covers some employees in regional offices, expires July 1, 2009. We intend to renegotiate both of these agreements.

The current IFPTE-AALJ contract expires January 31, 2010, and we intend to renegotiate that contract as well.

20. Many concerns have been expressed about the impact a totalization agreement with Mexico could have on Agency workloads and the Social Security Trust Funds. Would you provide the latest specific information about the status of the totalization agreement with Mexico signed by then Commissioner Barnhart on June 29, 2004? What are the specific stages of the approval process and where exactly is this agreement in the approval process?

During totalization negotiations, United States (U.S.) negotiators explained to their Mexican counterparts that U.S. statutes always take precedence over totalization agreements.

After the agreement was negotiated, but before it was signed, Congress enacted the Social Security Protection Act (SSPA) of 2004.³ Accordingly, we attempted to have Mexico affirm that under U.S. law (and the totalization agreement) we would not be able to pay benefits to persons who have violated immigration law. To date, the Mexican Government has not confirmed that it agrees with our view of the effect that the SSPA has on the totalization agreement.

Five years have passed since the Mexican totalization agreement was negotiated. The terms and Trust Fund costs associated with any agreement negotiated five years ago are likely to have changed.

³ Section 211 of P.L. 108-203, which applies to alien workers whose SSNs are first assigned after 2003, provides that benefits cannot be paid based on the earnings of any noncitizen unless SSA has issued the noncitizen an SSN indicating authorization to work in the United States.

Once we consider a totalization agreement to be final, the DOS, the National Security Council, and the Office of Management and Budget must then review the agreement. Finally, the White House decides whether to present any such agreement to Congress. If so, the President sends the agreement to Congress.

[Submissions for the Record follow:]

Statement of Cary L. Bartlow, PhD

Since 1985 I have been an independent Vocational Expert (VE) providing expert witness contract services for the Social Security Administration's Office of Disability Adjudication and Review (aka ODAR). I am writing to ask for your assistance in getting answers to what has been, and continues to be a confusing and seemingly disorganized merry-go-round process affecting our compensation for Expert Witness services in ODAR Hearings.

As you may know, the current rate for which we are compensated was set around 1972. There has not been an increase in the amount the Vocational Experts are paid in over *thirty-eight years*. In 1972 that rate of compensation was very fair. Now some thirty-eight years later, inflation has almost completely eliminated any way to make a reasonable profit when providing these valuable services. Most of us in the Vocational Expert field have other job duties, and the work for Social Security is not essential to our practice. However, it remains essential to Social Security. The agency requires the use of an Independent Vocational Expert to provide vocational expert testimony in Social Security Hearings for many Title II and Title XVI cases. Through our work cases are expedited and move toward completion much faster than without our services. I fear some experienced Vocational Experts will find it necessary to cease their work due to such poor compensation. If this happens the SSA disability case backlog will increase ten-fold at a minimum.

In order to do the Vocational Expert work one must have a College Degree. Most VE's have Master's Degrees. I have a Doctor's Degree. I am a Licensed Professional Counselor, Certified Rehabilitation Counselor, Certified Vocational Evaluator, and a National Board Certified Counselor with over 38 years of experience. Yet we are paid at a piece-rate wage based on standards of pay established 38 years ago. The compensation paid by Social Security is not worthy of our training, education, work, experience, credentials or degrees. We hope you will agree. Undoubtedly many of our colleagues and staff would not remain long at a job if your pay was the same as 38 years ago.

A task force headed by two distinguished colleagues, Mr. Scott Stipe of Oregon and Mr. Tom Dunleavy of Illinois, have worked hard to bring our request for an increase in pay to light. Finally, in August 2008 Vocational Experts were pleased and excited to learn in writing by SSA that the VE's would all receive a long overdue and reasonable pay increase for their vocational expert services. The Vocational Experts were finally being recognized for their professionalism, patience and willingness to assist SSA in disability claims.

The August 2008 contract offered for the SSA Vocational Experts, including myself presented a long overdue increase in compensation. We were asked to complete an application under the new BPA contract expeditiously; and VE's across the nation did just that. The new rates and provisions of the contract were to go into effect October 1, 2008. Through our association, the International Association of Rehabilitation Professionals, we posted the good news. Medical Doctors who serve as experts were also included in the long awaited increase.

Curiously, some VE's in other regions did not get the new contract, but were given yet another extension to the old contract. Everyone assumed that the new contract with pay increases would soon reach everyone across the nation. We patiently waited for the good news to happen in real life. The value of our essential services was finally being recognized and appropriately rewarded.

On September 12, 2008, SSA sent another urgent message to the ODAR offices, stating that "all action should be stopped on the new contract." The message stated that the contracts would be placed on hold until further notice, and the agency was currently in the process of assessing some possible changes to the BPA package associated with *security issues*. That was the only explanation we received. Another communication came from the ODAR Regional Offices on September 26, 2008 stating the deadlines had been lifted, and all VE contracts were extended through December 31, 2008. Nothing was mentioned about taking away the raises.

A Status Update from the ODAR ME/VE Contractor Workgroup came on October 9, 2008. The statement given was, "We want to reassure you that the new BPA is forthcoming. We must issue a new BPA to include PII language and fulfill the security requirements. We are also concerned about the BPA's expiration date of December 31, 2008. We are speaking with Headquarters' Executive Management and others regarding this timeline. We anticipate the release of the new BPA by the end of the month. Your patience in this matter is greatly appreciated." Nothing was mentioned about taking away the pay raise.

The next communication received was an email on January 7, 2009 which stated, "Greetings, attached is the newly updated BPA Contract". VE's were shocked, dismayed, disappointed and angry that the newly updated contract was rescinded to the old 1972 rates, and this contract would be in place until September 2010.

This insult was worse than a slap in the face. There was no explanation other than an email that was forwarded from ODAR stating that the August 2008 contract had not been approved.

One cannot imagine that the contract had not been approved. One would naturally assume that it was PRE-approved prior to being offered to all VE's across the nation. SSA does not just arbitrarily send out blanket contracts without approval first. The January 2009 contract made changes in the status of the VE being associated with any particular ODAR office. Changes were made as to how we report a monthly contractor invoice and request for travel reimbursement. Still yet other regional offices did not send out the January 2009 contract, but extended the VE contract until March 31, 2009. No reason was given for taking away our pay raise. None at all. And, to add to the insult we were told we would not be paid mileage for our travel from our office to the local SSA hearing site (unless it was over 50 miles away??!!).

It is disconcerting to VE's that we find ourselves left to slowly swing and die on the limb. Our contract is for a national service program. We were told that the funding did not come through for our contract because the SSA agency was under a Continuing Resolution. SSA knew they were operating on a Continuing Resolution went they sent out the original contract, the one that had our pay raise. So, this excuse does not hold water.

Contract hearing monitors and reporters, who take notes and operate the recording machines, renegotiated their contracts during this same time interval, and many received substantial increases for this same period our contract was to cover. Many of them earn more than the VE's; and they do not require but a high school diploma to do their work. Whereas, VE's are a group of professional highly skilled people who have extensive training, education, certifications and years of job placement and job development experience. Most provide forensic testimony in state and federal courts.

We strive for excellence in our field and take pride in assisting the Social Security Administration in carrying out the legal provisions under the Social Security Act. It is a genuine and reasonable fear that many VE's will be less available to do this work as the compensation is no longer commensurate with what we deserve and can be earned elsewhere. Most VE's are now angered, saddened, frustrated and disheartened with the recent events.

To add to our distress, it has been learned Attorneys and Representatives for the Disabled Claimant Applicants are going to *see their compensation increased!!!* They do not even have a contract with SSA.

I returned my BPA application for continuing VE services timely on the last day of January 2009. Then, get this, on February 15, 2009 I received a third and NEW packet to complete for the THIRD TIME.

We need your help. I would appreciate any assistance that you can give me and my Vocational Expert colleagues concerning what is happening in the Social Security Administration as it relates to Vocational Expert pay and compensation and *when we can anticipate an increase in compensation.*

Yours truly,

Cary L. Bartlow, Ph.D.

Licensed Professional Counselor

Certified Rehabilitation Counselor

Certified Vocational Evaluator

National Board Certified Counselor

Diplomate-American Board of Vocational Experts

Certified Counselor for the U.S. Dept. of Labor

Certified Counselor for Oklahoma Workers Compensation Court

Statement of Dorothea Bawks

The Social Security Administration is inundated by Baby Boomers with disabilities. SSA employees can not keep up with the pace. They have not been given the resources to. We all need to cut back on many things. But one area which causes the SSA system to be continuously back logged has to do with the burden of unnecessary hearings. The "Back to Work" incentives are failing. These incentives have

botched people with disabilities and the SSA system in general from a 'simple to solve' level. It has to do with the monthly amount of money an individual on SSD or SSI is allowed to earn in order to keep their benefits. Just to be clear, going back to work enhances persons with disabilities lives on too numerous levels to mention. However, when all an individual can manage is part time, the following built in failures need to be changed:

Waive the earned income ceiling during the 3 months every calendar year when an employee receives 5 or 3 pay periods a month instead of the usual 4 and 2.

Recognize that controlling one's income is not always the prerogative of the employee, particularly if the employee is new and has not yet earned the time off needed to take a week off from work three times a year to stave off losing their benefits by closely monitoring their income.

Acknowledge that this restriction is more often than not an 'unknown' by the person with a disability. Who is telling them in advance? Many people with disabilities end up losing their benefits permanently because there was an extra pay period in a given month that caused them to supersede the monthly allowed earned income and had no idea they were breaking any SSA rules.

Recognize that many of these people end up requesting hearings due to the fact they never received notice of this rule. As a result they did not make an informed choice and are miffed as to why their benefits have ceased.

Recognize that discrimination by employers toward people with disabilities is still alive and well and that requesting three unpaid weeks off per year dually jeopardizes an employee with a disability in terms of employment retention. Many people avoid going back to work based on the intellectual sophistication of employer/employee agreements that would have to be in place in order to comply with this rule, or the fear of what would happen if they failed to acquire such an agreement.

Choose to accept a third or fifth pay period three times a year without penalty. This will free up the Adjudicator's schedules not only due to the lessening of appeals, but also due to the lessening of re-application for benefits which almost always end up in appeals as well.

Make it retroactive, for people with intellectual or cognitive disabilities (especially mental illness which is loaded with cognitive deficits). This alone would free up thousands of people with disabilities to stop fearing and make choices to go back to work, ease the SSA burden in processing 'earned income' records, and allow the appeals courts to steadfastly move ahead.

Finally, recognize with this one change there will be far less American Families who are homeless, or without health coverage, heat, food, electricity, and/or fuel.

Statement of Earl Tucker

This is an outline of some of AFGE's concerns at the Social Security Administration and some suggested recommendations to improve service to the public and reduce the disability backlog.

Underfunding and Understaffing—

SSA is severely underfunded and understaffed. SSA budget is totally inadequate to provide the benefits that workers are entitled to receive. SSA budget for FY 2009 should be at least \$11.5 billion to allow SSA the resources it needs to provide timely SSA benefits to workers that have paid into the SSA trust funds. With the additional funding, SSA need to hire more staffing in all components (both in headquarters and all non-headquarters components) of the agency nationwide. In addition, we need extra staffing for field offices, DDSs and the Disability Quality Branches. SSA will also need to increase the size of the DDS Reconsideration Sections.

Disability Improvements

SSA should have dedicated staff specifically trained to handle DIB interviews. Specialized staff must be trained to better document and to probe for underlying developmental requirement to correctly complete DIB interviews done by field office employees. We need to prevent the grocery shopping attitude that sometimes develop here during the DIB interview. Without in-depth training, some employees feel that they are shopping for the cook but would like to specialize and know more about what is needed to better help the DDSs to properly adjudicate the DIB claims.

Screening of ODAR Cases—Until the ODAR backlog is manageable, there should be at least one expeditious screening unit set up in each component performing dis-

ability work to reduce the ODAR backlogs. These units should screen targeted cases without using ODAR's templates, written decisions or Staff attorneys to adjudicate the medical aspects of the cases. While other components are screening cases for potential disability allowances, it seems premature to apply an ODAR legal standard when deciding a case at this juncture using the medical evidence.

Prototype States—End all prototype states and reinstate reconsiderations in those states so that they will be done by the DDS instead of ODAR. We must stem the flow of unnecessary cases going to ODAR in the first place. Ending prototype states would do this and the DDS would do all reconsiderations. In addition, the DQB should sample up to $\frac{1}{2}$ of all DDS reconsideration denials.

Administrative Law Judge—Open up the opportunity to get into the ALJ position to all SSA employees who are not lawyers but have disability experience. As you know, at one time most of SSA employees who adjudicated claims were lawyers but SSA found out that they did not need lawyers to adjudicate initial SSA claims. The same should be true for appeals. We don't think you need to be a lawyer to hear each and every appeal. Therefore, employees with disability experience should have the opportunity to become non-attorney hearing officers.

The above represents our thinking on ways to help clear some of the disability backlog.

Service Delivery Comments

SSA's new unwritten plans to deliver service to the public can only be done at the expense of dedicated employees and quality assurance. Quality has disappeared mainly because of the so called 'budget constraint'(underfunding and understaffing). It appears, SSA thinks they can hide behind budget constraints to reduce employees further and hinder premium progress. Now SSA is developing guises and schemes to increase production instead of training all employees for one-stop shopping to delivering quality service to the public.

SSA needs to get back to its mission "to provide the correct check, to the correct person in the correct amount." SSA needs to recognize that we do not provide a commodity to the public. We are providing them with their "income" to survive in this turbulent economic time. SSA was at one time a first class agency who recognized that we dealt with individuals and their very specific needs and concerns. Social Security applicants and beneficiaries are not just anonymous voices at the end of a phone line or internet applications.

Before we go into the guises and schemes, We need to draw a parallel example. Years ago, when you flew you were served food even in economy section of a plane. Now you have to buy meals in the economy section, if food is available on your flight in the first place. AFGE believes that this is where SSA is headed even though we are not in business to make a profit like the airline industry.

In order to cope while underfunded and understaffed, some of the most recent guises and schemes seems to be as follows:

1. SSA's total lack of trust for employees when requesting unexpected time off—In some components, many employees are not respected and valued by SSA especially when they need unforeseen time off work for any personal reason including emergencies. They are requiring employees to bring some type of documentation before final approval of the unexpected leave. If the time is granted, SSA has threaten to investigate the authenticity of the document that they required the employee to obtain.

2. Recording 800# calls—SSA is changing the philosophy and tradition of never recording 800# calls. Now SSA wants to shorten the length of calls by recording the calls to maximize production for each 800# agent. In the past, employees were allowed to take the necessary time and get each call right in order to provide quality public service. SSA plans to start recording all calls to the 800# in the near future. For over 20 years, SSA has utilized monitoring and observation of 800# employees to rate the service delivered by telephone. As a result SSA has the best 800# system in the world with a 96.7% accuracy rate for calls affecting payments in answering the concerns of the public. But according to SSA, 96.7% payment accuracy is not good enough because they want to utilize the recordings to shorten the length of calls and to discipline employees for extended calls. Overall, AFGE sees this as creating a more hostile work environment and an attempt to reduce the number of employees and shortchange the public.

3. Internet On Line Applications—SSA plans to have the public complete their own application for SSA benefits without human intervention or a face to face interview. The SSA programs are very complicated. Without SSA experience, the public can not answer many of the questions on the application cor-

rectly such as month of election, lag wages, onset date, worker comp, railroad earnings, military service credits, resources etc. It takes an employee at least three years to learn any one of the three SSA programs. AFGE believes the public deserves quality service from experienced employees to get the correct benefits upfront. In addition, we believe fraud waste and abuse will run rampant without human intervention in the internet online application process. Identity thieves and hackers are major problems in our society and the limited proof requirements built into the system will not detect fraud, waste, and abuse. The Agency is ignoring the fact that the general public is extremely reluctant to deal with either individuals over the phone or an internet process that they cannot trust. There have been too many instances of vulnerable beneficiaries being preyed upon by bogus individuals and companies both on the phone and online all too ready to divest them of their limited benefits. The Agency is failing to realize the value of the frontline Field employees who not only provide a human face to Social Security but also provide service, preserve privacy, prevent fraud and instill confidence in a program that serves a large part of the general populace.

3. Virtual Environment—SSA plans to eliminate the 10 distinctive regional lines in Office of Quality Performance (OQP) for a virtual environment. This means that a beneficiary's case in Chicago, Illinois can be reviewed by employees in any location. This elimination could do away with the regional validity of our quality performance findings. Therefore, the findings would most likely be national leaving out regional findings. AFGE believes that SSA wants to manipulate staffing with this virtual environment. In locations that are more productive, SSA will put more staffing in those locations and less in others creating a hostile environment everywhere.

4. Pre-effectuation Reviews (PER)—OQP reviews 50% of all allowances made by the Disability Determination Services (DDS) before payments are made. This review saves the trust fund over \$600 million per year. SSA is looking for way to reduce DDS complaints. The DDSs complain about our reversals which in the end save money in the trust fund. SSA is now doing a cursory review instead of a complete review on some of these cases. SSA is investigating new ways to reduce, revise or stop these cost saving reviews even though they are mandated by Law. The proposed PER review changes need thorough investigation, and should be bargained with AFGE. SSA is now doing a cursory review of some PER cases that may be less likely to have a high return rate. They want to put the focus on reviewing claims where, in management's words, they get "more bang for the buck." Namely, cases where younger individuals might collect over more years. This is not only discriminatory against younger individuals in a program that is supposed to serve all citizens, equally, but it also circumvents the intent of PER review established by Congress. PER was intended to be a way for the Agency to protect it's "integrity" and the viability of the funds that it was entrusted to distribute. By conducting PER reviews the Agency is able to provide a visible savings of Trust Fund monies and able to demonstrate that it can do a system of checks and balances on itself. To attempt to "water down" PER and it's proven value over the years by limiting it's impact is self defeating not only for Social Security but also for the dwindling Trust Fund.

Staff was told that the time savings in the cursory reviews would be used to allow OQP to accomplish other agency goals, such as adjudicating ODAR cases at the ALJ level. This is not even a part of the OQA mission, and should not be implemented unless employees receive adequate compensation for performing work that ODAR staff attorneys often do. Management has circumvented the need for bargaining on this issue because they claim there is a "de minimis" impact on employees. This is a ridiculous argument since it completely changes the focus of our work.

Recommendations:

1. SSA's funding and staffing must be increased dramatically.
2. We also strongly recommend more training and promotions—To improve service delivery to the public, all employees must be trained to provide "one stop" shopping. One stop shopping means that any employee can process an action to completion without referrals. Currently, one stop shopping does not exist for some employees because they have not been fully trained. As a result, many employees have to refer the work to someone else to process due to lack of training. To train everyone to provide one stop shopping could be expensive because this will require some promotions. However, we don't think SSA has much of a choice in providing one stop shopping if they want to improve service delivery to the public in an electronic environment.

3. Ratio of employees to management—The ratio of employees to management is quite high at SSA. It varies from component to component. It is lower than 3 to 1 ratio in some components and as high as 20 to 1 in others. Even officials with such a low number of employees seldom process initial case work, with the exception that they evaluate a small sample of the work done by the 5 employees. The ratio should be much higher in all components with proportions less than 20 to 1. There should be a standard, across the board, consistent, management/employee ratios in SSA. OQP differs wildly from region to region. There should be delayering of this complicated and inconsistent management structure, with fewer middle managers especially program leaders. SSA has about 200 Program Leaders in the Office of Quality Performance that are suppose to function as team Leaders or program technical assistants to other employees. If these employees are, in fact, leaders in the program then they should be working cases when they are not providing technical assistant where needed. Since these employees very seldom work a case from start to finish they are not leading anybody in the program or performing the public business as the leaders. These Program Leaders are not in the bargaining unit even though they do not perform any supervisory functions. Also, in my opinion they do not perform any other function that would preclude them from being members of the bargaining unit. In other components of SSA, program leader type positions are called team leaders or technical assistants and they are in the bargaining unit, but not in the OQP unit. The OQP program leaders should be in the bargaining unit to process the work of the public instead of performing unnecessary management related assignments. Basically, the Program Leaders, rightfully, should be processing actual cases and leading the team as members of the bargaining unit.

4. Flexiplace/Telework—Since around 2001, SSA's has allowed a few employees to work at home from 1 to 2 days a week. Up until now, flexiplace had been one of the most productive programs at SSA. SSA is denying employees the same access to SSA computer systems that they granting to the public and their representatives. SSA must expand the number of days to work from home and allow employees access to SSA computer systems from home as well.

The restriction of flexiplace does not follow federal guidelines on federal workforce telecommuting, which were passed in order to allow for fewer commuters, contributing to energy savings and greater work productivity.

5. Information Technology—SSA's cost for information technology is steadily rising without any quality reviews to ensure the health of these system expenditures. The OQP in SSA should have certified programmers on staff to perform quality reviews in all areas of information technology especially since information technology is requiring more and more of SSA resources. In addition, SSA needs more IT resources to get rid of COBOL and other antiquated software.

Finally, AFGE believes SSA's management philosophy is that electronic and technological advances should somehow automatically eliminate employees and drastically reduce the amount of time that is needed to process it complex work. AFGE disagrees with that philosophy which is not supported by objective evidence from the workplace.

SSA should model its service delivery in a similar fashion to that of those cities that have provided pedestrians with a better method to cross busy intersections. In those cities walk lights have second counters on them to let pedestrians know when they are running out of time to navigate the street crossing. This technology has cleared the intersection of pedestrians being caught in the middle of the street after the light changes. It is important to realize that cities installed these second timers, but did not reduce the amount of time for pedestrian to cross the intersection. I recommend that SSA take advantage of these electronic and technological advances without reducing the amount of time needed to deliver services. If employees are given the same amount of time to process SSA's work, the efficiency will become self evident.

It seems to AFGE that SSA is acting like a corporation trying to make a profit instead of attempting to deliver world class quality service to the public. To think of ourselves as a corporation where reviews are supposed to be tailored to bring "more bang for the buck", is totally inappropriate. We are a government agency that is supposed to deliver to our citizens, applicants, and beneficiaries information, advice, and benefits that they are entitled to. We believe management has lost sight of Social Security's mission to serve the public and administer the program in a fair and equitable manner. Without proper planning inclusive of employee/union participation, staffing, training, funding, and management commitment to service of the public, Social Security will continue to fail in its attempts to address the problems

of rising applications, the backlog of disability related appeals, and addressing the information technology needs of the workforce and the public they serve.

Earl Tucker
President
AFGE Council 224

**Statement of Georgina Huskey,
National Association of Disability Examiners**

Chairman Tanner, Chairman McDermott, Congressman Johnson, Congressman Linder, Members of the Subcommittee on Social Security and Members of the Subcommittee on Income Security and Family Support: This hearing was called for the purpose of reviewing the Social Security Administration's response in addressing the critical issue of the increasing backlogs of disability claims and how additional stimulus funding could improve service. The National Association of Disability Examiners (NADE) appreciates this opportunity to submit comments on this important subject. We have had similar opportunities in recent years to address this subject before your committees and we commend the Subcommittees, their respective Chairmen, and their Members for their continuing oversight of this important issue.

Who We Are

NADE is a professional association whose purpose is to promote the art and science of disability evaluation. The majority of our members work in the state Disability Determination Service (DDS) agencies adjudicating claims for Social Security and/or Supplemental Security Income (SSI) disability benefits. As such, our members constitute the "front lines" of disability evaluation. However, our membership also includes SSA Central and Regional Office personnel, attorneys, physicians, non attorney claimant representatives, and claimant advocates. It is the diversity of our membership, combined with our extensive program knowledge and "hands on" experience, which enables NADE to offer a perspective on disability issues that, we believe, is both unique and reflective of a programmatic realism.

NADE members—throughout the DDSs, SSA Regional Offices, SSA Central Office, ODAR offices and throughout the private sector, are deeply concerned about the integrity and efficiency of both the Social Security and the SSI disability programs. Simply stated, we believe those who are entitled to disability benefits under the law should receive them; those who are not, should not. We believe decisions on disability claims should be reached in a timely, efficient and equitable manner. The continuing backlogs in disability claims are an embarrassment to SSA, to DDSs, to Field Offices, to ODAR, and they are a nightmare to those waiting for a decision.

NADE members are very appreciative of the support Members of the House Ways and Means Committee have provided to SSA for so many years. Your recognition of the critical need for adequate resources at SSA, and your willingness to accept a leadership responsibility on this matter, has resulted in vital funding urgently needed for SSA. We greatly appreciate the support for funding at a level above the President's proposed FY 2009 budget and for the \$1.092 billion in funding included for SSA in the American Recovery and Reinvestment Act of 2009. We hope you will also support the President's FY 2010 Budget Request of \$11.6 billion for SSA's administrative expenses.

The Problem

The Social Security Administration is facing an unprecedented backlog of more than 1.3 million claims for Social Security and Supplemental Security Income disability benefits. The backlog of claims seems to be particularly problematic at the hearings stage, where the backlogs have more than doubled since 2000—from about 310,000 claims to more than 765,000—and the average waiting time per claim has soared to nearly 500 days. Even at the DDS level, where few backlogs are publicly reported and where the average processing time for an initial claim is nearly 100 days, the stark reality is that there are tremendous backlogs pending. Just because disability claims have been assigned does not mean they are being worked and disability examiners who carry caseloads two, three and even four times the number deemed reasonable are, in essence, housing a backlog of claims at their desk. Unfortunately, this backlog of claims can lead to mistakes in case development and contribute to mistakes in judgment, resulting in the potential for erroneous decisions. As we have duly noted in our previous testimony, the time required to process

claims grows longer at each stage of the claims process and claimants who are denied at the initial level often find themselves waiting years for a final decision from the Agency on their appeal. No one within SSA, within the DDSs, within Congress and certainly no one among the public will claim this represents good customer service.

Addressing the Backlogs

Addressing the backlogs in disability claims is a high priority for NADE. However, of equal concern is the average time it takes to process a claim, now 89 days for an initial claim pending at the DDS and nearly 500 days at the hearing level. Both processing times are too long and many people suffer needlessly as a result of these backlogs and extended processing times. Individual conditions can worsen during these lengthy wait times and can even lead to death. It is critical that answers be found to effectively resolve the persistent questions surrounding the backlogs and reducing the average processing time at all levels in the disability claims process.

In April, 2008, Representative Jim McCrery, a former Chairman of the Social Security Subcommittee and then its ranking member, offered the observation that constant under-funding of the disability program by the Congress over the past two decades had contributed heavily to the current crisis. Other Members of Congress, including Members of these Subcommittees, have made similar public comments. These comments underscore a primary source for the backlogs while the other primary source has been the hard choices made by SSA during these past two decades to deal with the realities of inadequate funding and insufficient staffing levels.

Faced with the reality of under-funded budgets and frequent staff turnover, caused in part by a heavy retirement wave that swept through SSA and the DDSs, SSA made some difficult policy and personnel decisions designed to permit the Agency to deal with the increasing number of claims with decreasing numbers of personnel. Quite frankly, many of these decisions did not produce the desired result and the Agency's ability to deal with the increasing number of claims was diminished even more so.

The growing complexity of the Social Security and SSI Disability Programs, coupled with the need to produce a huge volume of work, justifies even more the need for adequate resources in order to provide the service that the American public has come to expect and deserves from SSA. We have noted in the past, and we offer this reminder, that it takes at least two years for a newly hired disability examiner to become fully trained and proficient to the point they can function independently, contributing to the process of making timely and high quality disability decisions. Thus, decisions not to replace productive personnel when they leave can take two or more years to correct even after new hires are made. NADE has long maintained that it is critical for SSA to be provided with the resources needed to hire and train new staff that can perform these duties. Low salaries, hiring restrictions and the stress of the job have contributed to high turn-over in some DDSs. Given the hiring restrictions and inadequate resources placed on the SSA and DDSs, it is surprising the disability backlogs are not even higher than they are and that the number of claims processed has continued to increase despite inadequate funding and resources.

SSA over the past decade has made at least three distinct attempts to redesign the disability claims process in an effort to create new processes that will result in more timely and consistent disability decisions. Our own Association has been consulted on these efforts and we have, in the past, offered public comment on the various attempts. Many of our recommendations, and those of other stakeholders, went unheeded and the result was often poorly conceived designs and/or poor implementation with the overall results of these redesign efforts undertaken by SSA being that they have not produced the results expected. In fact, in many cases, they have only slowed the processing of claims while employees adjusted to the constant changes. The impact of these changes has contributed to the inability to manage the high workloads experienced in the past decade and contributed to decreased efficiency of operations. We are pleased the current administration at SSA has shown an increased willingness to listen to stakeholders and to incorporate their expertise in their management and policy decisions. We believe this will have an important impact on the Agency's ability to handle the backlog of claims.

In FY 2008, Congress appropriated more money for SSA's administrative budget than the President requested. This was the first time in 15 years Congress had acted so favorably and we are very grateful for this support. When one realizes the President's budget has traditionally been much less than the Commissioner had requested, it is easy to understand how we arrived at this point and why the backlogs exist. The congressional action of FY 2008 is the first step in a long road back to management stability for SSA. The action taken by Congress regarding SSA's FY

2009 budget demonstrate the ongoing commitment Congress has made to finding a solution to this crisis. It now falls to SSA, and its components, to utilize these funds for actions that will produce the desired outcome. On behalf of our members, and all who have an interest in the disability program, we thank the Congress for its financial commitment.

We do wish to caution that congressional and public expectations cannot be set to high initially. Years of constant under-funding cannot be undone overnight or in one or two budget years. However, we firmly believe that the additional funding will allow new hiring of staff and, where possible and where needed, payment for over-time for staff to reduce the backlogs.

State Furloughs

We also caution further against increased expectations regarding the value of additional funding provided by Congress because such positive action may be negated and, in some cases has already been negated, by actions taken in some states in their efforts to resolve their own budget issues. NADE has previously pointed out, and SSA and other witnesses have also pointed out, that some states have adopted hiring freezes and furloughs of state employees to reduce their expenditures. DDS employees, who are 100% federally funded and who have no impact on a state's budget problems, have not, in most states, been exempted from these drastic actions in spite of heavy lobbying by SSA that the states should exempt DDS employees. NADE has previously shared with the Congress our resolution on the matter of furloughs and hiring freezes (resolution adopted by NADE January 15, 2009—available for viewing at www.nade.org).

Recent statistics have shown that applications for initial disability claims have, not surprisingly, increased by 10% since the beginning of this fiscal year. Each week, the number of initial claim filings has increased from the week before and the number of new claims in calendar year 2009 is up 13.7%. The actions, taken by many states and being considered by others, have the effect of reducing the size of the workforce processing these claims or reducing the hours available for the workforce to process these claims. In effect, these actions will reverse the action taken by Congress to address the crisis in backlogs and lengthy processing times. If these state actions are not abated, then the disabled citizens seeking benefits will almost certainly face the prospect of even longer processing times and extended appeal times. We also note that the North Carolina State Treasurer, Ms. Janet Cowell, commented on March 24, 2009 that furloughs are not a long term solution and can, in fact, harm a state's financial stability. Actions that can eventually lead to financial instability should require more long term examination and we call upon Congress to intercede on behalf of all state employees who are 100% federally funded. We recognize difficult times require difficult decisions but difficult times do not require foolhardy decisions.

Potential Solutions to the Backlogs

- NADE strongly believes the Single Decision Maker (SDM) process can help to alleviate some of the backlogs at the initial level of case processing. This part of the prototype effort has proven to be successful in producing high quality decisions and a time saver when processing claims. SSA should expand the SDM initiative to all regions and to all case types, not only to reduce initial backlogs, but to lower processing times at the initial level. We believe that, with the adoption of national standards for SDM and continued improvements in the availability of ongoing training for disability examiners, the SDM can represent part of the solution to the crisis of backlogs and lengthy processing times at the DDS.

NADE absolutely supports the need for the expert medical advice in the DDS that is provided by DDS Medical and Psychological Consultants. However, such advice is best utilized on the more complex cases. Allowing these medical and psychological experts to invest their years of training and practical experience on cases where it is truly needed, instead of being used simply to sign off on simple decisions, can have a truly positive impact on the quality of the decision-making in the DDS which can have the positive effect of lowering the processing time for initial claims and diminishing the backlogs of cases pending at ODAR.

- Continued increases in staffing at the Field Office, DDS, and ODAR are a necessity for any rational expectation that the SSA can address the backlogs. It is no coincidence the backlogs have occurred after a period of downsizing within SSA. Some downsizing occurred as SSA sought to utilize precious financial resources in other areas rather than filling vacant positions. With the expectation that new designs in service delivery would allow the Agency to absorb the work-

load with fewer staff, SSA chose to invest its limited financial resources into technology enhancements. The problem became magnified when the new designs for service delivery failed to produce the results forecasted and many of the technology improvements equally failed to produce the desired results. The Agency was literally caught with no back up plan in place. Recent actions to appropriate new and additional funding will likely produce positive results toward reducing the backlogs but these results cannot reasonably be expected until new staff has become adequately trained in requisite job skills to produce at the level necessary to make an impact.

- SSA and DDSs will have to initiate the development of a career path for employees and adopt other employee friendly steps to reduce the increasing attrition rates that have robbed the Agency of its program knowledge base. As experienced staff walk out the door, either due to retirement or because of career changing decisions, SSA and the DDSs have struggled in many parts of the country to attract the kind of new hires that will keep the Agency at a level of competence required in its service delivery. Prior to the recent economic downturn, DDSs were reporting an annual attrition rate approaching 15% with more than 22% of newly hired disability examiners leaving by the end of their first year. The result has been an increasing lack of experienced personnel to process increasingly more complex disability claims and forcing the DDSs to utilize limited training funds to continually hire new staff, rather than provide ongoing training for existing staff. While anecdotal evidence suggests this level of attrition has diminished as a result of the economic downturn, it is reasonable to expect that, without proper planning and the development of proper career paths, the attrition will resume once the economy rebounds.

NADE believes additional staff is needed in SSA's Field Offices and tele-service centers. These are the **"Front Doors"** of SSA and people walking through these doors deserve the kind of service one should expect from SSA. Allowing phones to go unanswered and/or requiring people to wait so long in SSA's Field Offices that many give up and leave because there are insufficient number of people to answer the phones or help them fill out the proper forms, is not the way government should serve the people. It is certainly not the level of customer service the Agency desires to provide. Field Office personnel also perform a valuable service in maintaining program integrity.

NADE believes additional hiring is needed at the ALJ level, both in terms of support staff as well as the need for additional administrative law judges. We are pleased to see SSA has recently announced plans to hire additional staff at this appellate level and we caution that these additional hires, while expected to contribute to a reduction in the backlogs, will need time to become sufficiently trained and adequately prepared for the task.

- SSA's continued investment in technology enhancements will have an impact on the overall quality of the program and can be expected to produce a positive impact on reducing the backlogs. New initiatives in the exchange of health information technology (HIT), development of a new national computer data center, and other steps to modernize the Agency's technology infrastructure will be expected to have a positive impact on the Agency's ability to address the crisis of backlogged claims.
- The increase in applications at the initial level and the increase in appeal filings can be expected to continue as long as the economy is in its current state of crisis. However, we believe the actions taken by Congress and this Administration will lead to a revitalization of our national economy and will, in turn, lead to a subsequent decline in the number of disability applications to a more normal level.
- Other actions, such as shifting workloads to less busier offices, have been made possible by the technological improvements to date and we expect additional positive action in this regard. With fewer staff available, SSA has deferred some workloads. Although we caution this practice can have future negative consequences, it does enable the limited staff available currently to focus their efforts and concentrate on the backlogged claims.

One Member of this Subcommittee posed the question, "We give them the money, why can't they fix it?" The obvious answer, which we hope we have addressed, is that two decades of under-funding cannot be corrected in one or two fiscal years. We appreciate Congress now recognizes it has contributed to the problem and has acted to appropriate additional funding to correct past mistakes. We fully believe positive change will occur but it will not occur overnight and we ask that Congress and the American public to be patient while SSA acts to coordinate new levels of

funding with appropriate management decisions regarding how this funding should be allocated. We encourage these Subcommittees to continue to provide the necessary oversight needed to insure that these funds are spent appropriately.

Continuing Disability Reviews (CDRs) and Program Integrity Issues

Limited resources in recent years have forced SSA to reduce the number of CDRs performed. Of concern to NADE is the past history of these types of actions and the resultant impact as the agency falls behind in these critical reviews. When a backlog of CDRs occurred previously it took a great deal of effort by all components of SSA to reach a point where CDR reviews were being conducted as scheduled. It took a significant number of years of dedicated funding solely for the purpose of conducting CDRs before SSA was current with CDR reviews. With the decrease in the number of CDR reviews done in the past few years, there is now a real danger the Agency will, once again, find itself in the position of having backlogs of overdue CDRs. Thus, it is possible the Agency will work itself out of one backlog into another.

While there are increased administrative costs (including the purchase of medical evidence, claimant transportation costs and increased utilization of contract medical consultants) with the performance of CDRs, there is a potential for significant savings in program costs with the elimination of benefits paid to beneficiaries who are found to be no longer eligible for disability benefits due to no longer meeting the SSA Disability program requirements. The estimate is that for every \$1 in administrative cost spent on conducting CDRs, \$10 of program funds is saved. This historical ratio of 10–1 was evidenced most recently when, in FY 2008, SSA spent \$281 million to conduct a limited number of CDRs, with eventual cessation of benefits for 36,000 individuals, leading to program cost savings of \$3.3 billion. While NADE agrees that it was necessary to decrease the number of CDRs done over the last couple of years given the status of SSA's budget and the need to utilize staff to process other case types, this decision has repeatedly been described by many, including a former SSA commissioner and members of this committee, as "penny-wise and pound-foolish". It is essential to program integrity that CDR reviews be conducted in a timely manner to ensure that only those who continue to be eligible are receiving disability benefits. Dedicated funding has been shown to be the best means of SSA staying current with the CDR workload. NADE encourages this committee to recommend appropriating dedicated funding for CDRs to ensure this workload gets the attention it deserves.

Anti-fraud efforts such as the Cooperative Disability Investigative (CDI) units which effectively utilize the strengths and talents of OIG, disability examiners, and local law enforcement, offer a visible and effective front-line defense for program integrity and serve as a visible and effective deterrent to fraud. SSA's Inspector General attributed the success of the CDI units to investigate fraud allegations to the efforts of, "... those most qualified to detect fraud—DDS adjudicators." NADE supports the continued expansion of the CDI units to combat fraud and abuse in the disability program. An experienced disability examiner can be one of the most effective deterrents to fraud and abuse. NADE urges Congress and SSA to take appropriate action to ensure the experience level in the DDSs can be maintained.

5 Month Cash Benefit Waiting Period and 24 Month Medicare Waiting Period

It is important to note that in Title II disability claims, persons found disabled under the Social Security Disability program must complete a full five month waiting period before they can receive cash benefits. So, a disability allowance decision, even when it is processed quickly, will not resolve the issue of having to wait five full calendar months before the claimant will be able to receive any cash benefits. NADE believes that requiring some individuals (Title II claimants) to serve a waiting period before becoming eligible to receive disability cash benefits while not requiring others (Title XVI claimants) to serve the same waiting period is a gross inequity to American citizens with disabilities.

We are also deeply concerned about the hardship the 24 month Medicare waiting period creates for these disabled individuals, and their families, at one of the most vulnerable periods of their lives. Most Social Security disability beneficiaries have serious health problems, low incomes and limited access to health insurance. Many cannot afford private health insurance due to the high cost secondary to their pre-existing health conditions.

It has been proven time and time again that earlier medical intervention could help disabled individuals return to the workforce. Therefore, NADE supports the total elimination of, or at least substantial reductions in, the Five Month Waiting Period for Cash Benefits and the 24 Month Waiting Period for Medicare eligibility.

Summary

The operational challenges facing SSA are substantial and are expected to become even more acute in the coming years as our society ages, as baby boomers continue to prove the actuaries correct regarding their forecasts of the baby boomers most disability prone years, as the economy continues to offer periodic setbacks, etc. Decades of inadequate resources for SSA, combined with increased workloads and less than desirable results from multiple redesign efforts, have not only caused backlogs in the number of disability claims pending at the initial and hearing levels, but has allowed existing backlogs to increase. Processing times, expected to decline with the introduction of new technology have, instead, increased due to sufficient resources in personnel.

Recent increases in funding for SSA's administrative budget can be expected to produce reductions in the Agency's backlogged claims and lead to improvements in processing times at all levels. However, this new funding cannot, and will not, overnight, make up for mistakes of the past. The need to hire, train and deploy new staff will take several years before any realistic expectation that they will contribute significantly toward efforts to reduce the backlogs of claims. A variety of management strategies can be utilized to help diminish the backlogs and produce the desired improvements in processing time but these strategies will have future consequences.

No amount of planning by SSA can reverse the negative impact on production and processing times caused by state hiring freezes and state employee furloughs that affect DDS personnel. Congress must support the Commissioner's efforts to force the states to exempt DDS employees, who are 100% federally funded, from state hiring freezes and furloughs of state employees.

The crisis of backlogged disability claims, while a significant problem, cannot be used as a reason to abandon program integrity initiatives. It remains critically important that the public's confidence in the disability program not only be restored but maintained.

A lot of effort has been made to improve the speed at which disability claims are processed and to eliminate/reduce the backlogs of claims. NADE agrees improvements are needed. However, we wish to remind the Members the 5 month waiting period for cash benefits and the 24 month waiting period for Medicare eligibility will negate the positive impact of faster processing times and reduced backlogs. These waiting periods should be eliminated or significantly reduced.

No other agency has a greater impact on the quality of life in this nation and the American public will judge the ability of their government to meet their needs almost solely by the quality of service provided by SSA. Social Security can and must do better in fulfilling its promise to America and NADE stands ready, willing, and able to assist in fulfilling that promise. People with disabilities, already burdened by the challenges of their illness/injury, are often in desperate need of benefits to replace lost income. They deserve, and should receive, timely and accurate decisions through a fair and understandable process. Our challenge, and one which must be met, then is to ensure the disability determination and appeals process meets those criteria.

Statement of James F. Allsup, President, CEO and Founder of Allsup

Chairman Tanner, Chairman McDermott, and Members of the Subcommittees meeting in a joint hearing today, thank you for considering my written testimony regarding the Social Security Administration's massive disability claim backlog.

My name is James Allsup and I am the founder, president and CEO of Allsup, the country's largest non-attorney Social Security Disability Insurance (SSDI) representation company. We have helped more than 110,000 individuals obtain disability benefits since 1984.

The focus of today's hearing is the SSDI system's immense "official" backlog, which to date has been ably chronicled by members of Congress and the nationwide media. To get a true handle on the situation, however, much more attention needs to be paid to the even bigger problems that are looming.

A Growing Pre-Backlog Crisis

One way to think of the SSDI backlog is as a backed-up highway tollbooth plaza. Even if you add more lanes or find technological ways—like E-Z Pass—to speed cars through the tolls, you won't break the blockage if too many other drivers are flooding the highway to take their place.

This is the situation now facing the Social Security Administration. Almost three-quarters of a million people with severe disabilities and without jobs are waiting for the hearings generally required to receive benefits. Unfortunately, behind that group, another half million applicants were already moving into the system's "pre-backlog" of claims last year. The irony is that after a very, very long wait with at least one rejection, most eventually will be awarded the benefits they deserve.

Social Security employees are working as hard as they can to help people who deserve care, but there is simply no way for them to keep up when so many individuals with disabilities are ready to take the place of those who get through the system.

Recession Increases the Challenge

The recession is making things even worse. Allsup recently reviewed data from recessionary periods during the past 40 years and found that Social Security Disability Insurance claims typically increase when times get tough.

The 40-year analysis includes the current recession, which began in December 2007, according to National Bureau of Economic Research data. Applications have increased during six of the seven recessions in that timeframe (January 1980 to July 1980 being the lone exception). Overall, the number of disabled workers applying for Social Security Disability Insurance grew to 2.3 million from 725,200 in 1969.

The current period is following that pattern. Commissioner Michael Astrue stated earlier this year that his agency is facing an unanticipated 10 percent increase in its disability claims caseload. That's 250,000 additional cases the SSA needs to review, further bogging down the system.

At this point, there are those who would write those increases off as simply a problem of fraud. They ask, fairly, why someone who was truly disabled did not apply for benefits before the job market slowed down and it became much harder to find work.

Unqualified applicants certainly can place a burden on the system, although there is a difference between individuals with disabilities who do not understand the technical requirements for eligibility, and out-and-out fraud. This is one way companies like Allsup help the SSA. Our system pre-screens applicants to ensure likely eligibility before they submit their claims.

However, it is not true that the recent application increase is simply an issue of fraud. As tough as the disability application process is, it's no surprise so many people try to avoid it at all costs. A process that involves years of tests, hearings and mountains of complicated paperwork—all for an uncertain promise of help that could be years away—is not something most people will cheerfully take on.

But when the economy takes a sharp downturn, new financial strains can force some people to realize they can no longer afford to live without the disability benefits they are owed. They may have been struggling to keep working with a progressive health problem and now lost their job. Perhaps the spouse who had been supporting the family suddenly loses his or her job.

The sad truth is that the current economic downturn will affect the system for years to come. Today's new applicants are tomorrow's backlog.

Searching For Solutions

Over the long run, additional resources for the SSA are needed to meet the backlog challenge. Unfortunately, the "long run" won't help many of today's applicants. The good news is that a simple, cost-free step could make an immediate difference in the problem.

Because applicants often don't know help is available, too many initial claims are denied for simple mistakes that have nothing to do with the applicant's disability status. In other cases, applicants who don't meet the standards for disability—but might if their conditions worsen over time—bog down the system when a simple pre-screening qualification process would let them know they aren't ready yet.

Congress and the President should therefore immediately direct the Social Security Administration to notify applicants that they have options for getting help in pursuing their claims. This includes "outside help," from organizations like Allsup or attorneys.

This really isn't an unusual concept as expert disability representatives work very much like professional tax preparers to help guide applicants through a government approval process, comply with the rules and laws, and get the benefits they deserve. By the time applicants reach the hearing level, about 90 percent are receiving assistance. Disability representatives can help solve the SSA's growing pre-backlog problem by working to ensure more applicants have help from the beginning. The Internal Revenue Service has for many years supported the concept that outside as-

sistance is valuable to both the individual and the agency. The same approach could work well for the SSA.

In addition, the SSA could attack the backlog directly by increasing the use of on-the-record hearing decisions for qualified claimants, which eliminate the need for oral hearings in two-thirds of our cases. Allsup pioneered the use of on-the-record hearing decisions for qualified claimants. When an on-the-record hearing decision is warranted, we prepare all the evidence, write the legal brief and submit a well developed and accurate claim to a judge for a decision.

This process has been effective for moving qualified claimants through the process. Approximately 70 percent of Allsup claims that reach the hearing level are approved on the record. Judges are able to make sound, informed decisions and cut off months in the processing time of an application. Not only does the individual avoid the hearing backlog, the decision is made quickly.

Collaboration, Not Privatization

I emphasize that this proposal is not a step toward privatization. It is a way for government to leverage the existing capabilities of expert disability representatives to immediately and positively affect the disability backlog.

Literally hundreds of thousands of government worker-hours could be saved if every application processed by the Social Security Administration was professionally documented before it was submitted.

Chairman Tanner, Chairman McDermott, and Members of the Subcommittees, I commend you for holding this hearing to raise awareness of these issues. Thank you again for the opportunity to provide testimony. I look forward to working with you to address this growing crisis.

Statement of John Yent, Louisiana Committee of Social Security Vocational Experts

My name is John Yent. I want to thank the Subcommittee for inviting public comment on the record for the March 24, 2009 hearing on the Social Security Administration's efforts to address the disability hearings backlog. I am submitting this letter on behalf of the Louisiana Committee of Social Security Vocational Experts (LCSSVE). The issues which you will discuss on March 24th are of great importance to claimants, to beneficiaries, their representatives, Administrative Law Judges (ALJs) and the independent Social Security Vocational Experts (SSVEs or VEs) who are an integral part of the disability adjudication process.

The Louisiana Committee of Social Security Vocational Experts is a group of independent vocational experts who provide vocational evidence in proceedings before the Social Security Administration (SSA) Office of Disability Adjudication and Review (ODAR). Our current membership of 33 VEs in Louisiana, shares the goals and concerns of more than 100 VEs in Region 6 of SSA and approximately 800 VEs nationwide. We are committed to the highest quality vocational expert services in these critical proceedings.

I am the Coordinator of LCSSVE. While recently undertaking this position, I have also provided vocational expert services to SSA/ODAR since 1997 and I have provided VE testimony in more than 3,500 Social Security disability hearings. My experience in private practice vocational rehabilitation and expert witness services includes thousands of clients since 1986. I have evaluated and assisted clients with the full spectrum of vocational rehabilitation services and job placement in the labor markets of Louisiana, Texas, Mississippi, Alabama and California. Beyond a Bachelor's and Master's degree, I am a Louisiana Licensed Rehabilitation Counselor (LRC), nationally board-certified as a Certified Rehabilitation Counselor (CRC), and Diplomate of the American Board of Disability Analysts. All of the members of LCSSVE are similarly qualified and provide services to SSA/ODAR at hearing offices located in Alexandria, Metairie, New Orleans, and Shreveport, LA. We are proud partners with SSA.

VEs are closely following developments at SSA, ODAR, and the budget affecting the disability backlog. We understand the enormity of the task facing ODAR adjudicating the disability backlog of over 700,000 claims as well as the pressures on Hearing Offices to produce decisions. *Increased utilization of VEs is essential to reducing that backlog.*

As you know, VEs fulfill an important statutory role in the disability adjudication process.¹ We provide the expert opinion and testimony at disability hearings which includes assessment of a claimant's work history, analysis of claimant's transferable skills to do other potential work, as well as current statistical data on availability of other work in the national and regional economy. We offer testimony in response to any number of hypothetical questions posed by the Administrative Law Judge, the claimant's attorney/ representative, as well as the claimant. We also provide expertise in the form of interrogatories posed by Administrative Law Judges and Senior Attorneys with ODAR which expedite claims, often making a hearing unnecessary. VEs have a substantial *impact on the decision-making process affecting billions of dollars in disability benefits* and are essential for ODAR to accomplish its mission. In order to do this,.

Having enough VEs for all of the adult disability hearings ODAR needs to schedule is a function of VE availability and of VE compensation. Examining the rosters, VEs *are committed* to SSA as evidenced by years—often decades—of reliable service each. VEs *still on the rosters* have continued to schedule hearings. The decision to be available for ODAR work has grown more difficult each year since 1972² when the current fee schedule was introduced. In the same time frame of 1970–2008, Congress approved pay increases for itself 21 times.³ SSA employees and beneficiaries have received numerous increases in this period as well, deservedly so. SSA has also approved compensation increases for claimant representatives several times, with another approved for June 2009.⁴ *The only group not receiving a labor market cost adjustments as of March 18, 2009 is—ironically—the very labor market experts SSA retains to provide vocational testimony.* For a VE to be available for ODAR hearings (payable at the 1972 compensation rates) means that the VE is turning down VE work *in other non-SSA venues payable at 2009 market rates.* Each year that market rates climb further away from SSA rates, highly experienced and exceptionally qualified VEs leave. The choice to stay is unsustainable long-term.

The VE/ME Workgroup examined VE qualifications and market rates for their services. VEs have graduate-level degrees, maintain professional continuing education, national board certifications in our field, have state licensure (where required) and are practicing vocational rehabilitation counselors with ample private sector work (personal injury litigation, worker's compensation, etc.). The ODAR disability adjudication process benefits from the knowledge base of VEs both from their private sector experience as well as experience in typically thousands of ODAR hearings. *As with any occupational group, the number of individuals who hold themselves out as experts in the field and can function in a judicial setting to qualify as an expert witness is less than 1%.*

Retention of experienced VEs must become a priority. It is our understanding that Federal agencies should establish contract pricing per regulatory guidance using a variety of sources and techniques. Selected price methods and reasonableness of contract rates must also be documented.⁵ Further, we understood that the Contracting Officer and Project Officer are responsible for research and obtaining pricing data.⁶ Having researched the history of VE fees, we identified only one report. The Inspector General last produced a report on VE and ME fees in 2001 referencing FY 1999.⁷ At that time, ODAR (then Office of Hearings and Appeals, "OHA") had BPA contracts with 1,337 VEs nationwide. Payments to VEs were \$21.6 million dollars or about 3.1% of OHA's then budget of \$687 million dollars for FY 1999. ODAR's administrative budget has expanded vastly since 1999; VE fees are unchanged.

More recently, a consultant report commissioned by SSA in 2006 and presented in 2007 suggests that the future direction of the adjudication process by ODAR involves *expansion of the vocational expert role* in a "medical-Functional/Vocational" (mFV) model.⁸ The authors of that report opined,

¹ 20 CFR §§ 404.1566(e), 416.966(e); SSR 00–4p.

² 1972 is an *estimate* of its introduction. Official SSA Historian, Mr. Larry DeWitt, has not located this schedule's debut date.

³ See Attachment 1: "Congressional Pay Raises: 1789–2008"

⁴ National Organization of Social Security Claimant Representatives website update (nossccr.org) February 11, 2009.

⁵ 48 C.F.R. §§ 15.402(a)(1), 15.403–1(c)(1), 15.406–2 and 15.406–3.

⁶ Social Security Acquisition Regulation System, Subpart H2301.102–4(c)(1)(i).

⁷ See Attachment 3: Inspector General Report A–06–99–51005, "Vocational Expert and Medical Expert Fees," dated 8/21/2001).

⁸ "Use of Functional/Vocational Expertise" Project report dated 5/11/2007 (SSA Contract #SS00–06–60072) submitted to Robert Pfaff, SSA Project Coordinator, by Jennifer Christian, MD, MPH, Project Director of the SSDC Webility Project Team.

“To ensure that enough qualified mFV experts are interested in participating, and also that a suitable mix of professions is interested, increase the fees paid to be reasonably competitive with open market rates. The project panel believes that if fees are set similar to current VE payment rates, SSA is very unlikely to obtain the experts needed. Consider varying rates based on profession, expertise level, tasks done, and prevailing regional fee levels.”

In real terms, the number of VEs has been steadily dropping with fewer highly experienced VEs choosing to renew their BPA contracts with SSA due to the stagnation of the VE fee schedule. It is clear that VE services are statutorily required and are actively sought out by Administrative Law Judges as VE testimony is essential at Steps 4 and 5 of the disability sequential evaluation process. However, the disability backlog will continue to grow if fewer experienced VEs are available *to be scheduled for those hearings*.

We applaud the leadership of Social Security Commissioner Michael Astrue to bring funding requests to the attention of Congress. The testimony last spring of Chairman Sylvester J. Schieber of the Social Security Advisory Board, to the Committee on Ways and Means, provided compelling evidence for greater SSA and ODAR funding, and for improvements to be made.⁹ Also in testimony again before Ways and Means in September 2008, ODAR’s Chief Administrative Law Judge, the Honorable Frank A. Cristaudo,¹⁰ further underscored the point that hearing office productivity is critical and staff attrition at all levels must be addressed with adequate funding.

VE funding has not been mentioned in any testimony records we identified.

As Chief Judge Cristaudo made clear, despite the best technology, and 175 newly hired judges in 2008, hearing offices still require appropriate staffing levels at *all levels*. Adjudication requires Judges to obtain vocational evidence from a VE at sequential evaluation steps 4 and 5, therefore appropriate budgeting for VEs is as important as funding for Judges, Senior Attorneys, Decision Writers, Schedulers, Clerks and Hearing Reporters.

The Louisiana Committee of Social Security Vocational Experts respectfully requests the support and backing of the Ways and Means Subcommittee on Social Security, the Social Security Advisory Committee, the Social Security Administration and the Office of Disability Adjudication and Review to ensure the retention of experienced and qualified VEs to assist with the disability adjudication backlog. VE fees commensurate with market rates for VE services would ensure continued and expanded VE availability.

We enjoy our excellent working relationship with the Social Security Administration, the Office of Disability Adjudication and Review, and look forward to continuing that relationship for many years to come. Your response to these concerns is much anticipated and greatly appreciated.

In conclusion, we thank you and all members of this Subcommittee for your interest in these issues. I would be pleased to respond to any questions you may have.

Sincerely,

John M. Yent, MA, LRC, CRC, CLCP, ABDA
Coordinator, LCSSVE

c.c.:

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The Honorable David V. Foster
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⁹Statement of Sylvester J. Schieber, Chairman of the Social Security Advisory Board, to the Committee on Ways and Means on April 23, 2008 “Clearing the Disability Backlog—Giving the Social Security Administration the Resources It Needs to Provide the Benefits Workers Have Earned.”

¹⁰Statement of Frank A. Cristaudo Chief Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, testimony before the House Committee on Ways and Means Subcommittee on Social Security, September 16, 2008

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Statement of Joyce R. Shoop

I am a Vocational Rehabilitation Counselor working under contract to the North Dallas Office of Disability Adjudication and Review (ODAR) to provide Vocational Expert testimony in Social Security Disability Hearings. I have worked for SSA/ODAR for the past 17 years and have seen how the expertise of VE's has helped move the cases along toward resolution. I have noticed that in the past few years there have been more and more hearings in which the onset dates have been 1995 to 2000. These cases were still not decided after 8-14 years! In many cases, there were no experts on the cases when they were originally heard by the Administrative Law Judges, and had been remanded—in some cases, more than once. I understand the anguish this causes the applicant for benefits and the high cost associated with multiple remands. With the use of Vocational and Medical Experts, these cases can be adjudicated much more quickly and efficiently. It is my understanding that your committee is now addressing the problem of the enormous backlog of Social Security cases in order to decide how to resolve the issue and get the cases moving.

I would like to suggest that your committee consider how Vocational Experts can help in resolving this problem, and would like to call to your attention a situation that needs resolution regarding VE fees, which should free up our time to work more with the ODAR offices. As our fees are now, none of us can afford to work for SSA more than a few days per month because our other work pays two to four times more. SSA's fee schedule for Vocational Experts has remained unchanged since 1972. A VE in 2009 is paid the exact same amount for services as a VE was paid in 1972. The current fee schedule is so old that even the official SSA Historian, Mr. Larry DeWitt, is unable to find the original "debut" date of the schedule. It is truly mind-boggling that any fee increase has been postponed for 37 years but it remains an undisputed fact. VEs began to organize a collective response to SSA approximately six years ago. SSA formed a VE/ME Workgroup to explore fee issues. By mid 2008, a preview of the new fee schedule indicated the increase was approved by SSA for the next VE contracting term set to coincide with FY 2009 (10/1/2008). In August 2008, the VE contract offer from SSA included the fee increase. I was so pleased, and completed my packet and submitted it promptly. Sadly, I was told in September that the fee increase had been put on hold and we would be getting an extension of our old BPA (Blanket Purchase Agreement). Realizing that SSA was operating under a continuing resolution with no approved budget for FY-09, I remained hopeful for the increase to come through when Congress passed a budget. I did receive an extension of my BPA for Oct.-Dec., and in December received another extension through March. Then in January, I received a new BPA application with the fees back at the old rates from 1972. Before completing the packet, I was told to disregard it, and wait for another packet (hope returned!). Then in March 2009, I received another application packet again reinstating the 1972 rates, and taking away mileage and parking reimbursement unless we travel over 50 miles—a reduction in our contract! In addition, language was removed requiring a professional degree (Master's or above) and licensure or national certification, which has always been the professional standard for service as a VE. This is further evidence of the lack of value that SSA places on the expertise that VE's possess. Without this expertise, judges may make poor decisions based on poor quality testimony of less qualified "experts." With this "slap in the face" for VE's many are deciding NOT to renew their contracts and discontinue working for SSA/ODAR. In view of the landmark appropriation which SSA received for FY 2009 and the further projected 10% increase for FY 2010, there is no excuse for VEs to go any longer without the appropriate fee increase. I believe that if this increase is approved, we will see greater availability of well qualified VE's and faster movement of cases through the adjudication system. Thank you for considering this recommendation of the VE/ME fee increases as part of your deliberations in your subcommittee hearing.

Respectfully Submitted:

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Statement of Linda Fullerton

My name is Linda Fullerton, President/Co-Founder of the Social Security Disability Coalition, and it is with great sadness, anguish and despair that I submit this testimony to you today. I watched this entire hearing on the internet and as always, it was a source of major frustration for me.

Call For Open Congressional/SSA Disability Hearings

I was forced to watch this hearing on the internet, because my repeated requests over the last several years to testify in person, have been blatantly ignored. I have made it very clear in previous written testimony submitted for the hearing record, through faxes, e-mails and phone calls, to all the Congress people in my district, others on this Subcommittee, and many others in both the House and the Senate Committees that affect the Social Security Disability Program in any way, that I want to testify in person at these important hearings that directly affect me and others like myself. For some reason beyond my comprehension, you still will not let me do that. I have been following these hearings, for over five years now, and I find it deeply disturbing, and glaringly obvious, that not one panelist/witness selected to

appear, is an actual disabled American who has tried to get Social Security Disability benefits, and who has experienced this nightmare for themselves. Unfortunately this continues to be the case with this hearing as well. While the witnesses you continually rely on may be very reputable in their fields, unless you have personally tried to file a claim for Social Security Disability, you cannot begin to understand how bad this situation really is, and therefore the panelists you continue to rely on are not fully qualified to be the only authority on these issues.

As a result of my repeatedly denied requests to testify, it is my opinion, that you don't want to know what is REALLY going on. I heard references during this hearing to a CBS news report from January 2008 which tried to expose some of the problems you have come here to discuss today. What I am sure you are not aware of, is that I personally was the source that initiated that whole investigative report, and since due to time constraints my interview air time was so limited, I plan to release my own video in the coming weeks on the internet, to alert the American people to the ugly realities of what it is like to try and get the SSDI benefits that they have been forced to pay for, and may never survive to actually collect. They need to know how the Federal Government continually breaks its social contract with them on a daily basis. It seems to me that if you do not have to face someone such as myself, that has barely lived through this horrible nightmare, and has had their whole life permanently devastated as a result of continued neglect of this program, we remain just a bunch of SS numbers whose lives can be destroyed without guilt. We are in fact, your mothers, fathers, sisters, brothers, children, grandparents, friends, neighbors, and honorable veterans who have served this country. Something is severely wrong with this picture!

When you question the SSA Commissioner at these hearings, why have you not ordered him to provide the data on how many Americans have actually died each year, or have been forced to use state provided services, while waiting for their SS Disability claims to be processed? Since the SSA also pays out a one time death benefit to a survivor's family, and contracts out the medical portion of disability claims to the states who provide the Social Service programs that disability applicants often need to use, this data should be readily available if you bothered to ask for it. These are important questions that need to be answered, but it seems to me you don't care enough about the disabled to ask them. How can you get an accurate handle on this situation without all the facts and appropriate witnesses who wish to testify? Who better to give feedback at these hearings than those who are actually disabled themselves, and directly affected by the program's inadequacies! It seems you have forgotten that WE are the customers, and the SSA and Congress work to serve us.

I find it hard to believe that these hearings cannot be scheduled in such a way that different and more appropriate witnesses could be allowed to testify. If you continue to do the same thing over and over again, as you have for the past several years, you will continually get the same poor results, which is exactly what is happening. You ask the same questions, of the same people, and wonder why there is little to no, improvement between hearings. There is a major piece of the puzzle missing—the customers you have been elected to serve—and until you really commit to getting the ALL the information needed to fix the Social Security Disability program, you are making decisions based on a lack of important information, which can be very detrimental, and the problems are going to continue to escalate, no matter how much money you put toward fixing them. As an actual disabled American, I ask again today, as I have in the past, that in future Congressional hearings on these matters, that I be allowed to actively participate instead of being forced to always submit testimony in writing, after the main hearing takes place. I often question whether anybody even bothers to read the written testimony that is submitted when I see the continued lack of results after previous hearings. I am more than willing to risk my very life for the opportunity to testify, should I be permitted to do so, since I believe so strongly in the importance of this program. In fact, I ask that you call another hearing, and allow me to be the sole witness, since the eye opening information I have to share with you would fill the entire 1–2 hours, since this program is so badly broken, and filled with corruption at every level. I have also come up with solutions to all the problems as well, which I would also be discussing at that time.

I want a major role in the Social Security Disability reformation process, since any changes that occur have a direct major impact on my own wellbeing, and that of millions of other disabled Americans just like me. I also propose that Congress immediately set up a task force made up of SSDI claimants, such as myself, who have actually gone through the claims process, that has major input and influence before any final decisions/changes/laws are instituted by the SSA Commissioner or members of Congress. This is absolutely necessary, since nobody knows better about

the flaws in the system and possible solutions to those problems, then those who are forced to go through it and deal with the consequences when it does not function properly.

Social Security Disability Nightmare—It Happened To Me!

Social Security Disability is an insurance policy which was created to be a safety net for millions of disabled Americans, and for many such as myself, it has become their only lifeline for survival. I have an inoperable blood clot and tumor in my brain, and suffer from several incurable autoimmune disorders that are too numerous to list, which have caused me to become permanently disabled and my condition continues to deteriorate by the day. I currently receive Social Security Disability Insurance/SSDI and Medicare. You can get even more detailed information about my personal horror stories, which are not for the faint of heart, on my websites:

“A Bump On The Head” <http://www.frontiernet.net/lindaf1/bump.html> Social Security Disability Nightmare—It Could Happen To You! <http://www.frontiernet.net/lindaf1/SOCIALSECURITYDISABILITYNIGHTMARE.html>

I filed an SSDI claim in December 2001, was denied in March 2002 by the NYS ODTA (Office Of Temporary And Disability Assistance), filed an appeal, and then had to wait until June 2003, due to the severe hearing backlog in the Buffalo NY Office Of Hearings & Appeals, before my SSDI claim was finally approved.

Permanent Devastation Resulting From The SSDI Claims Process

Unbearable stress, severe depression and suicidal thoughts are very common side effects of the disability claims process. I know this not only from my own personal experience, but from thousands of others that have contacted me to tell me their horror stories. The abuse and worry that applicants are forced to endure, causes even further irreparable damage to their already compromised health, and is totally unacceptable. Due to the total devastation on their lives and health as a result of the SSDI claims process, use of the SS Ticket to Work program, or any future chance of possibly getting well enough to return to the workforce, even on a part time basis, becomes totally out of the question. Plus there is always the stress of having to deal with the SS Continuing Disability Review Process every few years, where the threat of having your benefits suddenly cut off constantly hangs over your head. Many are under the mistaken notion that once the SSDI benefit checks come, if one is finally approved for disability benefits, that everything will be OK. Often the devastation caused while waiting for SSDI claims to be processed leaves, permanent scars on one's health and financial wellbeing as it did for me. Even though I won my case, I continually deal with enormous stress and face the continued looming threat of bankruptcy and homelessness, due to the cost of my healthcare and basic living expenses, and I do not qualify for any public assistance programs. After almost dying, and continuing to battle several incurable diseases, I had to wipe out all my life savings/pension money, and will never be able to recover from the financial, physical and emotional devastation that was caused, due to the enormous wait for my SSDI claim to be processed. Due to the 24 month waiting period for Medicare, (I didn't become eligible for it until June 2004) I had to spend over half of my SSDI check each month on health insurance premiums and prescriptions, not including the additional co-pay fees on top of it. All the SSDI retro pay is gone now as well—used to pay off debts incurred while waiting for 1½ years to get my benefits, and even though I am now receiving my monthly SSDI checks benefits, they are no where near enough to live on for the rest of my life.

It is hard enough to deal with all the illnesses that I have, but then to have my entire life destroyed with the stroke of pen by a neglectful government employee, to whom I was just an SS number, is more than I can bear. So now, not only will I never recover from my illnesses, but now I also will never recover from the permanent financial devastation this has had on my life. I don't know how I am going to survive without some miracle like winning the lottery. My “American Dream” will never be realized. I have now been forced to live the “American Nightmare” for the rest of my days, because I happened to get sick, and file a claim for Social Security Disability benefits, a Federal insurance policy that I paid into for over 30 years. I am now doomed to spend what's left of my days here on earth, living in poverty, in addition to all my medical concerns. I will never be able to own a home, or get another car. My current vehicle which is on death's door, is the ONLY method of transportation I have for survival. When things break down now, I cannot fix them and have to do without. I struggle every day to pay for food, medicines, healthcare, gas etc. having to decide which things I can do without till the next check comes, since I live strictly on the inadequate, monthly SSDI check I receive, always tee-

tering on the brink of disaster. This totally unbearable, continuing source of stress and frustration, is killing me. I did not ask for this fate and would trade places with a healthy person in a minute. I tell you this not for pity or sympathy, but so you can get an accurate picture of what is really happening to the most vulnerable citizens of this nation, whom you were elected to serve and protect.

Social Security Disability Claimants Face Death And Destruction When Applying For Benefits

I must report with great sadness and disgust, that all these hearings have not brought about much progress, if any at all, and things continue to worsen by the day. In our country you're required to have auto insurance in order to drive a car, you pay for health insurance, life insurance etc. If you filed a claim against any of these policies, after making your payments, and the company tried to deny you coverage when you had a legitimate claim, you would be doing whatever it took, even suing, to make them honor your policy. Yet the government is denying Americans their right to legitimate SSDI benefits everyday and this is an outrage!

I continually hear you talk about hearing waiting times 200 days vs 600 days, like it was nothing but a number. Everyday that a disabled American must wait for their benefits, is a day that their life hangs on by a thread, or worse yet, they do not survive. The stress from that alone is enough to kill anyone. Since it has been proven over the years that the average American has about two weeks worth of savings, anything over a 14 day waiting period in any phase of the SSDI process is totally unacceptable. Cutting hearing wait times down to even 30 days, is nothing to tout as some great accomplishment on your part, as it still puts claimants lives in jeopardy. If any other private company/organization operated with as poor customer service, and processing times that the SSA currently does, subjecting people to hours, days, weeks, months, and worse yet years, to get their issues resolved, all employees would be fired, and they would be shut down within weeks. Nobody would even attempt to give them their business, yet Americans are held hostage to the SSA since they are required to pay for their services out of their wages, and rightfully expect to get what they have paid for. This is outrageous when something this serious, and a matter of life and death, could be handled in such a poor manner. Common sense would also lead you to the conclusion, that there is a strong correlation between the crisis that disabled Americans face while trying to get their benefits, and the housing, and economic meltdown this country is in the midst of. I challenge anyone of you to try and live for more than two weeks, not relying on your assets (since many SSDI applicants lose all their assets while waiting for a decision on their claims), with absolutely no income, and see how well you survive. Also keep in mind that you are not disabled on top of it, which adds its own challenges to the problem. Based on my own experience, and the experiences of thousands of others which have been shared with me, and current conditions, I firmly believe that the SSDI/SSI program is structured to be very complicated, confusing, and with as many obstacles as possible, in order to discourage and suck the life out of claimants, hoping that they "give up or die" trying to get their disability benefits! The following statistics back up my statement:

Some Staggering Statistics During 2006 and 2007, at least 16,000 people fighting for Social Security Disability benefits died while awaiting a decision (CBS News Report—Disabled And Waiting—1/14/08). This is more than 4 times the number of Americans killed in the Iraq war since it began.

During 2007, two-thirds of all applicants that were denied—nearly a million people—simply gave up after being turned down the first time (CBS News Report—Failing The Disabled—1/15/08) PLEASE NOTE—I personally was the source behind these CBS News reports and was featured in the broadcast of "Disabled And Waiting." Two-thirds of those who appeal an initial rejection eventually win their cases (New York Times 12/10/07) In 2007 there were 2,190,196 applications, in 2008 there were 2,320,396 applications (a yearly increase of 130,200 new claims) and as of March 2009 there have already been 677,553 new applications (an increase of 113,784 claims for the January—March 2008 period) for Social Security Disability Insurance/SSDI benefits.

There are currently over 1 million people waiting for their claims to be processed, over 154,000 of them are veterans, and many have been waiting for years! Nationally as of March 2009, about 61% of disability cases were denied at the initial stage of the disability claims process and it took from 100.5–106 days for claimants to receive the initial decision on their claim. If a claimant appeals the initial denial asking for reconsideration, in all but 10 test states where the reconsideration phase has been removed, 85.4% of cases were denied and the waiting time for this phase was an average of 83.7 days. As of March 2009 there were 761,772 cases waiting for hearings with an average wait time

of 501 days. As of March 2009—266,951 hearings (35%) have already been pending over a year, and there are only 1042.67 Administrative law judges (ALJ's), to hear all those cases, with an average of 685.70 cases pending per judge nationwide. If a claimant appeals an ALJ hearing decision to the Federal Appeals Council, the average time from request for AC/Appeals Council Review to Appeal Council's Decision is 8 months. NOTE: It is not unusual to find cases pending for up to 24 months for various reasons. Cases pending longer than 24 months are then considered for expedited processing. In 2006—71% of the 88,907 cases that were sent to the Appeals Council were denied. In 2007—637,686 disabled Americans were forced by law to endure the mandatory 24 month waiting period for eligibility to receive much needed Medicare benefits. Source: Social Security Administration Reports

An Office of the Inspector General Audit Report "Disability Claims Overall Processing Times" (A-01-08-18011) released in December 2008, found that in 2006, the average overall processing times for disability claims from the date of application to the date of denial or date of benefit payment (including any back payments), that had to complete all phases of the disability claims process (Initial, Reconsideration, ALJ Hearing, Appeals Council and Federal Court) in order to be resolved, took a total of 1,720 days to complete. In 2008 due to the severe backlogs at the SSA especially at the ALJ Hearing level, this overall processing time greatly increased and unless the SSA gets the proper funding and staff it needs to resolve the problems it is encountering, this trend will continue. Federal Disability programs have been designated as "High Risk" by the GAO every year since 2003 and continue to be on the GAO High Risk list in 2009. NOTE: GAO's High Risk list serves to identify and help resolve serious weaknesses in areas that involve substantial resources and provide critical services to the public. Source: GAO-09-271—High Risk Series—January 2009 According to Health Affairs, The Policy Journal of the Health Sphere, 2 February 2, 2005: Disability causes nearly 50% of all mortgage foreclosures, compared to 2% caused by death. "The escalating pace of foreclosures and rising fears among some homeowners about keeping up with their mortgages are creating a range of emotional problems, mental health specialists say. Those include anxiety disorders, depression, and addictive behaviors such as alcoholism and gambling. And, in a few cases suicide.

"Historically, research shows, rates of depression and suicide tend to climb during times of economic tumult." "Studies show a strong connection between financial distress and emotional stress, including anxiety, depression, insomnia and migraines." Excerpts from Foreclosures Take Toll On Mental Health—Crisis Hotlines, Therapists See A Surge In Anxiety Over Housing—USA Today—Stephanie Armour—5/15/08 AARP/USA Today: Health Care To Get The Hollywood Treatment—5/28/08—"More middle-class people file for bankruptcy because of healthcare related expenses than for any other reason." Market Watch: Illness And Injury As Contributors To Bankruptcy—February 2, 2005—found that: Over half of all personal U.S. bankruptcies, affecting over 2 million people annually, were attributable to illness or medical bills. 15% of all homeowners who had taken out a second or third mortgage cited medical expenses as a reason. Dateline NBC—Debt: The Next Big American crisis?—Chris Hanson—3/27/09—Medical bills are a leading cause of debt in America. According to an insurance survey, conducted by the International Communications Research of Media, PA from Jan 10–14th 2007, on behalf of the National Association of Insurance Commissioners, researchers found 56% of U.S. workers would not be able pay their bills or meet expenses if they become disabled and unable to work. 71% of the 44% who had insurance, stated it was employer provided, so if they lose or change jobs they would no longer have disability coverage. In April 2006, Parade Magazine in an article called "Is The American Dream Still Possible?"—published the results of their survey of more than 2200 Americans who earned between \$30,000 and \$99,000 per year, most stating that they were in reasonably good health. 66% say they tend to live from paycheck to paycheck and nearly 83% say that there is not much money left to save after they have paid their bills. Approximately 54 million Americans, an estimated 20% of the total population, have at least one disability, making them the largest minority group in the nation, and the only group any of us can become a member of at any time. As our baby boomer population ages and more veterans return from war, this number will double in the next 20 years. It is a diverse group, crossing lines of age, ethnicity, gender, race, sexual orientation and socioeconomic status.

People with disabilities are nearly twice as likely as people without disabilities to have an annual household income of \$15,000 or less. Notwithstanding the strides made in disability rights in the past 25 years, the majority of people

with disabilities are poor, under-employed and under-educated due largely to unequal opportunities.

The source for these statistics: Disability Stats And Facts—Disability Funders.org <http://www.disabilityfunders.org/disability-stats-and-facts> Disabled Americans Unite For Reform Of Social Security Disability Insurance Program The Social Security Disability Coalition, of which I am President/Co-Founder, is made up of Social Security Disability claimants and recipients from all over the nation, and our membership increases by the day. It was born out of the frustration of my own experience, and the notion that others may be dealing with that same frustration. I was proven to be totally correct beyond my wildest imagination. Our group is a very accurate reflection and microcosm of what is happening to millions of Social Security Disability applicants all over this nation. We fill a void that is greatly lacking in the SSDI/SSI claims process. While we never represent claimants in their individual cases, we are still able to provide them with much needed support and resources to guide them through the nebulous maze that is put in front of them when applying for SSDI/SSI benefits. In spite of the fact that the current system is not conducive to case worker, client interaction other than the initial claims intake, we continue to encourage claimants to communicate as much as possible with the SSA in order to speed up the claims process, making it easier on both the SSA caseworkers and the claimants themselves. As a result we are seeing claimants getting their cases approved on their own without the need for paid attorneys, and when additional assistance is needed we connect them with FREE resources to represent them should their cases advance to the hearing phase. We also provide them with information on how to access available assistance to help them cope with every aspect of their lives, that may be affected by the enormous wait time that it currently takes to process an SSDI/SSI claim. This includes how get Medicaid and other State/Federal programs, free/low cost healthcare, medicine, food, housing, financial assistance and too many other things to mention here. We educate them in the policies and regulations which govern the SSDI/SSI process and connects them to the answers for the many questions they have about how to access their disability benefits in a timely manner, relying heavily on the SSA website to provide this help. If we as disabled Americans, who are not able to work because we are so sick ourselves, can come together, using absolutely no money and with very little time or effort can accomplish these things, how is it that the SSA which is funded by our taxpayer dollars fails so miserably at this task?

Social Security Disability Coalition—offering FREE information and support with a focus on SSDI reform <http://groups.google.com/group/socialsecuritydisabilitycoalition> Please visit the Social Security Disability Coalition (ARCHIVE) website, or the Social Security Disability Reform petition website: >Archive Of Old Social Security Disability Coalition MSN Group Website <http://ssdcoalitionarchive.multiply.com> Sign the Social Security Disability Reform Petition—read the horror stories from all over the nation: <http://www.petitiononline.com/SSDC/petition.html> At these two sites you will see thousands of stories and over 8000 signatures and comments on our petition, from disabled Americans whose lives have been harmed by the Social Security Disability program. You cannot leave without seeing the excruciating pain and suffering that these people have been put through, just because they happened to become disabled, and went to their government to file a claim for disability insurance that they worked so very hard to pay for. There are three main reasons for the disability hearing backlogs:

- Lack of communication and educating the public
- States of denial
- State and private disability companies forcing claimants to file disability claims with SSA or risk losing private coverage

Lack Of Communication Between Claimants, Doctors And SSA, Lack Of Education On What Is Needed For A Claimant To Prove A Disability Claim Currently there is little to no communication between the SSDI claimant and the SSA caseworkers handling their claims. More communication is needed and review of records by the claimant should be available at any time during all stages of the disability determination process. Before a denial is issued at any stage, the applicant should be contacted as to ALL the sources being used to make the judgment. It must be accompanied by a detailed report as to why a denial might be imminent, who made the determination and a phone number or address where they could be contacted. Also many times medical records submitted are lost or totally ignored. In case info is missing, or the SSA was given inaccurate information, the applicant can provide the corrected or missing information, before an actual determination at any level is made. This would eliminate many cases from having to advance to the hearing or

appeals phase. Also many times doctors, hospitals etc often do not respond to SSA requests for medical information in a timely manner, or sometimes ignore these requests entirely. ALL doctors, and medical professionals including those at the VA should be required by Federal or State law, to fill out any medical forms and submit documents requested by the SSA within strict timelines or they will not be allowed to practice medicine in this country. Also as part of their continuing education program in order to keep their licenses, doctors should also be required to attend seminars provided free of charge by the SSA, in proper procedures for writing medical reports and filling out forms for Social Security Disability and SSI claimants. The major criteria used by the SSA to decide a disability claim, is residual functionality and the "Blue Book Of Listings," yet this is not usually information that the general public is privy to when filing a disability claim. In fact it is a pretty well kept secret unless you know enough to do some research. In other words since the process is so nebulous from beginning to end, the deck is purposely stacked against a claimant from the very start. When the average person files a claim they seem to think that all they have to do is mention what is wrong with them, get their doctors to back up their medical claims, say they are disabled and cannot work, fill out a few forms and the checks will start coming in the mail. While in a ideal world the process should be that simple, nothing could be further from the truth. They do not realize, and are never told, that they must not only list their illnesses, but more importantly describe HOW their illnesses prevent them from doing work and daily activities. They are not told to list EVERYTHING that is wrong with them, and often only file a claim for one condition, that in itself may not be disabling, when they have several of them, that in combination, may in fact render them totally disabled. Many file claims because they cannot perform the job they have been doing for years, or cannot work as many hours that used to before they get sick. They do not fully understand that they have to not be able to work ANY job in the national economy, and that the SSA does not pay for partial disability. The SSA needs to do a much better job of educating the public at the onset of filing a disability claim to avoid confusion.

States Of Denial—The REAL Reason Behind The Social Security Disability Hearing Backlogs

Since Social Security Disability is a Federal program, where you live should not affect your ability to obtain benefits. Sadly this is not the case. While funding is a major problem that SSA faces, the other primary reason for these hearing backlogs, continues to be ignored during these proceedings, and that is the initial phase of the disability qualification process which is handled by the individual state DDS/Disability Determination Services offices. There, the most crucial part of your disability claim, the medical portion, is reviewed by a caseworker/adjudicator and medical doctor on their staff who never sees you, and in most cases never even communicates with you at all. Too much weight at the initial time of filing, is put on the SS caseworker's opinion of a claim. There needs to be more oversight that disability decisions be based with controlling weight given to the claimant's own treating physicians opinions and medical records in accordance with (DI 24515.004) SSR 96-2p: Policy Interpretation Ruling Titles II And XVI: Giving Controlling Weight To Treating Source Medical Opinions. Even though this policy ruling is in place, this is very often not happening. Excerpts from GAO-09-511T—Further Actions Needed to Address Disability Claims and Service Delivery Challenges—3/24/09—which can be found at: <http://www.gao.gov/new.items/d09511t.pdf> Although SSA is responsible for the program, the law calls for initial determinations of disability to be made by state DDS agencies. The work performed at DDS offices is federally financed and carried out under SSA disability program regulations, policies, and guidelines. See 42.U.S.C. § 421(a)(1). From September 1998 to January 2006, over 20 percent of disability examiners hired during that period left or were terminated within their first year. DDS officials said the loss of experienced staff affects DDS' ability to process disability claims workloads because it generally takes newly hired examiners about 2 years to become proficient in their role. For example in March 2009: Ohio had the lowest percentage of approvals at the initial level of 27.2% >Alaska and Wyoming had the lowest percentage of approvals at the reconsideration level of 0%.

Puerto Rico had the highest percentage of approvals at the initial level of 64.1% Puerto Rico had the highest percentage of approvals at the reconsideration level of 40.3% >Source: Social Security Administration—March 2009

That is a major fluctuation depending on what state you happen to apply for benefits in. Something is extremely wrong with this picture and proves the inconsistency of decision making by the state DDS offices in handing Federal disability claims. What would be an incentive for states to deny Federal claims? Since many Social Security Disability claims are SSI or both SSI/SSDI combined claims and

many states offer to supplement SSI payments at a higher benefit amount, therefore they want to keep as many off the rolls as possible so they do not have to pay out this supplement. Also since there is a different pay scale for government vs state employees who are often underpaid, lack training, are overworked, and must meet quotas of cases processed, the tendency is greater to rubber stamp denials to move claims off their desk when a case needs too much development. Thus the explanation for the fluctuation in denial/approval/backlog rates by state. Unfortunately there is very little if any training or oversight on the state DDS offices to make sure they are making the proper decisions on disability claims. This is why so many claimants appeal to the hearing level where a huge percentage of bad claims decisions are overturned and cases are finally approved. Anyone who doesn't see that a "Culture Of Denial" has become a pervasive part of an SSDI claimants encounter with the SSA, is either totally out of touch with reality or is reacting evasively to the subject. Excerpts from GAO Report GAO-04-656—SSA Disability Decisions: More Effort Needed To Assess Consistency of Disability Decisions—Washington—July 2004 which can be found at: <http://www.gao.gov/new.items/d04656.pdf>

"Each year, about 2.5 million people file claims with SSA for disability benefits . . . About one-third of disability claims denied at the state level were appealed to the hearings level; of these, SSA's ALJ's have allowed over one-half, with annual allowance rates fluctuating between 58 percent and 72 percent since 1985. While it is appropriate that some appealed claims, such as those in which a claimant's impairment has worsened and prohibits work, be allowed benefits, representatives from SSA, the Congress, and interest groups have long been concerned that the high rate of claims allowed at the hearing level may indicate that the decision makers at the two levels are interpreting and applying SSA's criteria differently. If this is the case, adjudicators at the two levels may be making inconsistent decisions that result in similar cases receiving dissimilar decisions." "Inconsistency in decisions may create several problems . . . If deserving claimants must appeal to the hearings level for benefits, this situation increases the burden on claimants, who must wait on average, almost a year for a hearing decision and frequently incur extra costs to pay for legal representation . . . SSA has good cause to focus on the consistency of decisions between adjudication levels. Incorrect denials at the initial level that are appealed increase both the time claimants must wait for decision and the cost of deciding cases. Incorrect denials that are not appealed may leave needy individuals without a financial or medical safety net . . . An appeal adds significantly to costs associated with making a decision. According to SSA's Performance and Accountability Report for fiscal year 2001, the average cost per claim for an initial DDS disability decision was about \$583, while the average cost per claim of an ALJ decision was estimated at \$2,157 . . . An appeal also significantly increases the time required to reach a decision. According to SSA's Performance and Accountability Report for fiscal year 2003, the average number of days that claimants waited for an initial decision was 97 days, while the number of days they waited for an appealed decision was 344 days . . . In addition, claimant lawsuits against three state DDS's have alleged that DDS adjudicators were not following SSA's rulings or other decision making guidance . . . However, according to DDS stakeholder groups, SSA has not ensured that states have sufficient resources to meet ruling requirements, which they believe may lead to inconsistency in decisions among states. Furthermore, SSA's quality assurance process does not help ensure compliance because reviewers of DDS decisions are not required to identify and return to the DDS's cases that are not fully documented in accordance with the rulings. SSA procedures require only that the reviewers return cases that have a deficiency that could result in an incorrect decision."

Excerpts from: Statement For The Record Of The National Association Of Disability Examiners—Georgina Huskey, President—Prepared For Subcommittee on Social Security/Subcommittee on Income Security and Family Support Of the Committee on Ways and Means Joint Hearing on Eliminating the Social Security Disability Backlog—March 24, 2009 "Even at the DDS level, where few backlogs are publicly reported and where the average processing time for an initial claim is nearly 100 days, the stark reality is that there are tremendous backlogs pending. Just because disability claims have been assigned does not mean they are being worked and disability examiners who carry caseloads two, three and even four times the number deemed reasonable are, in essence, housing a backlog of claims at their desk. Unfortunately, this backlog of claims can lead to mistakes in case development and contribute to mistakes in judgment, resulting in the potential for erroneous decisions."

"As experienced staff walk out the door, either due to retirement or because of career changing decisions, SSA and the DDSs have struggled in many parts of the country to attract the kind of new hires that will keep the Agency at a level of com-

petence required in its service delivery. Prior to the recent economic downturn, DDSs were reporting an annual attrition rate approaching 15% with more than 22% of newly hired disability examiners leaving by the end of their first year. The result has been an increasing lack of experienced personnel to process increasingly more complex disability claims and forcing the DDSs to utilize limited training funds to continually hire new staff, rather than provide ongoing training for existing staff." All phases of disability claims processing should be moved to and handled out of the Social Security individual field offices, including the DDS phase which is the medical determination phase currently handled by the states, and all hearing phases of the disability process. All people who process Social Security disability claims should be employees of the Federal Government to ensure accuracy and uniform processing of disability claims under Federal regulations and Social Security policies which is currently not the case. If the states are to continue to handle the DDS phase of the disability process, then all state employees handling Social Security claims should be required to receive a minimum of 3 months standardized training by the Social Security Administration, in SSA policies and Federal regulations governing SSDI/SSI claims processing. If more time and effort were put forth to communicate with claimants, and to make the proper decision at the onset, there would be no need for all these cases to be appealed to the hearings level in the first place. That in itself would be a huge factor in reducing the hearing backlogs, but this fact has been greatly ignored. Until you properly devote the time and energy to look into and reform this crucial part of the problem, the hearing backlogs will continue to grow at an uncontrollable rate, no matter how much money you give to the SSA. Social Security Disability Program Problems—Contributing Burden Factor on Medicaid/Social Service Programs For States There seems to be a relationship, between SSDI claims processing issues/backlogs, and the need for claimants to also apply for state funded Medicaid/Social Service programs. Many are forced to file for Medicaid, food stamps and cash assistance, another horrendous process. For example in New York State, about half the 38,000 people now waiting on disability appeals, for an average of 21 months, are receiving cash assistance from the state (New York Times 12/10/07). Those who file for these programs while waiting to get SSDI benefits, in many states, have to pay back the state out of their meager benefit checks once approved. As a result they're often kept below the poverty level, almost never able to better themselves since they can't work, and now are forced to rely on both state and federally funded programs instead of just one of them. This practice should be eliminated. Regulation Is Necessary To Avoid Improper Social Security Disability Claim Filings Due To State And Private Insurance Company Policies There is a growing number of claims being filed by people who may not actually qualify for disability benefits under Social Security guidelines, but who are being forced to file Social Security Disability/SSI claims by their private disability and state disability carriers or risk not being eligible for benefits under those programs. Recently there has been media coverage on this issue which can be found here: Trial Against Unum Over Handling of Disability Insurance Claims Opens Today—Market Watch—PRNewswire via COMTEX—Boston—9/22/08 <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=109&STORY=/www/story/09-22-2008/0004890097&EDATE=> Insurers Faulted As Overloading Social Security—NY Times—Mary Williams Walsh—4/1/08 <http://www.nytimes.com/2008/04/01/business/01disabled.html> Grassley Works To Strengthen Social Security Disability Program—3/27/09 <http://grassley.senate.gov/news/Article.cfm?customel dataPageID 1502=19961> Exhibit A—Private Insurers Policies And Practices <http://grassley.senate.gov/private/upload/EXHIBIT-A.pdf> Exhibit D—Letter To Senator Charles Grassley From Disability Claimant Who Was Required By Private Insurer To File Claim For Social Security Disability Regardless Of Eligibility Or Risk Loss Of Private Disability Insurance Benefits—1/21/09 <http://grassley.senate.gov/private/upload/Exhibit-D.pdf> Exhibit E—Letter From SSA Commissioner To FTC Chairman Regarding Private Disability Companies Requiring Their Claimants To File For Social Security Disability Benefits—11/26/08 <http://grassley.senate.gov/private/upload/Exhibit-E.pdf> Congress and the SSA needs to look into this issue and this practice needs to be stopped immediately as this too greatly adds to the disability backlog problem. In this case the claimants should not be penalized but the insurance companies should be.

Improper CE/IME Medical Exams Ordered By Social Security Result In Higher Rate Of Denials, Hearings And Appeals

Too much weight at the initial time of filing, is put on the independent medical examiner's opinion of a claim. CE/IME examiners are paid a fee by Social Security for each person they see, so the more claimants they process, the more money they make. Often times they are caught saying they performed exams that they in fact never performed, make mistakes, or make false, misleading statements about claim-

ants. Many times the DDS offices or ALJ's are sending claimants to doctors that have very limited knowledge of their specific health conditions, who are not specialists, or even the proper type of doctor, to be examining a claimant for the type of medical conditions that they have. These doctors have no real idea how a patient's medical problems affect their lives after only a brief visit with them, and yet their opinion is given greater authority than a claimant's own treating physician who sees them in a much greater capacity? Something is way out of line with that reasoning, yet it happens every day. Even though a claimant's treating physicians are supposed to be given greater weight in decision making, this is often not the case. Whenever SSA required medical exams are necessary, they should only be performed by board certified independent doctors who are specialists in the disabling condition that a claimant has (example—Rheumatologists for autoimmune disorders, Psychologists and Psychiatrists for mental disorders). Common sense dictates that these poorly executed, and often unnecessary, medical exams result in a waste of time, money and energy, for both the claimants and the SSA, especially when the claimant ends up appealing a denial based on these improper SSA ordered examinations.

Utilize Hearing On The Record/Pre-Hearing Review Option To Reduce Backlogs

More emphasis and support staff need to be devoted to the pre-hearing review process which could greatly reduce the current hearing backlog. This would obviously and should require more communication between hearing office staff and claimants or their representatives to update case files. Once the files have been updated, many would be able to be decided solely on the records in the file without having a full hearing in front of an ALJ.

Changes/Proper Funding Necessary For SSA To Accomplish It's Goals And Properly Serve Disabled Americans

I continually hear talk at these hearings about increasing the funding for the SSA, and you asking witnesses for answers, on how much the SSA will need to fix the current problems, and prevent new ones from arising in the future. One thing is said at the hearings, but when push comes to shove to vote for the SSA budget money, other programs or projects become higher priority, even though properly funding the SSA is literally a matter of life and death for millions of Americans. Nothing is more important than the health and wellbeing of the American people, and as elected officials it is crucial that you never lose sight of that priority! Still I see that the SSA is under funded almost every year, and there is a continued challenge to get the money that the SSA requests. SSA should not have to compete each year for funding with the Departments of Labor, HHS and Education which are highly publicized and therefore, often more popular programs. All money that is taken out of American's paychecks for Social Security should not be allowed to be used for anything else other than to administer the program and pay out benefits to the American people. As stated in the previous testimony provided by Witold Skierwczynski—President—National Council Of Social Security Administration Field Operation Locals to the House Ways And Means Committee on 4/23/08 it is recommended that: Congress should enact off budget legislation including SSA administrative expenses with benefits which are already off budget. Congress should retain appropriations and oversight authority albeit unencumbered by artificial budget caps and scoring restrictions. Congress should enact legislation requiring the Commissioner to submit the SSA appropriation request directly to Congress. Congress should support the House Budget Committee recommendation to increase the SSA administrative budget by \$240 million over the President's budget request.

Oversight is Crucial!

In an editorial letter from SSA Commissioner Astrue dated 8/21/08 to the Atlanta Journal Constitution in regards to the severe hearing backlogs it was stated that "We have taken a big step toward resolving that problem by bringing onboard 175 additional administrative law judges and additional staff to support them.." In reality: At the end of fiscal year 2007 the amount of ALJ's available to hear cases was at 1006, and at the end of fiscal year 2008 the amount of ALJ's available to hear cases dropped to 960.13. As of March 2009 there were in fact only 1042.67 ALJ's currently available to hear cases. Source: Social Security Administration Reports The 175 new ALJ's that the SSA Commissioner has hired, may actually already be factored into the March 2009—1042.67 number—the report does not distinguish. So even with the so called 175 new ALJ's we are still not much above the 2007 level. Basically this is still inadequate amount of ALJ's, since it does not account for the fact that more judges may continue to leave for various reasons (retirement etc), and that the level of disability claims continues to increase instead of decrease, based on past history. The Commissioner has failed to publicly account for this fact, so he makes it sound like there is going to be several additional ALJ's

above and beyond previous years, when he is in reality replacing judges who are leaving and not actually increasing by any substantial amounts, the number of the additional staff he truly needs. Also very often these judges have not even been allocated to the areas that have the largest hearing backlogs and there is no oversight on the SSA Commissioner to make sure they go where they are needed most. So the likelihood of the claims backlog being resolved with this so called “fix” is slim to none. In other words “this is like putting a band aid on a gushing wound.” More investigation of this problem by Congress, the Inspector General and GAO needs to happen immediately!

Horrendous Customer Service

In a January 2007 Harris poll designed to evaluate the services provided by 13 federal agencies, the public rated SSA at the bottom of the public acceptance list and it was the only agency that received an overall negative evaluation. SSA Field Offices have lost over 2,500 positions since September 2005 and nearly 1,400 positions since September 2006. In 2007 SSA Field Offices saw about 43 million visitors a week, and that number is expected to increase by over a million more in 2008. Constituents visiting these local Field Offices continue to experience lengthy waiting times and the inability to obtain assistance via the telephone. Here is just a small sampling of some of the major problems with the current Social Security Disability program and State Disability (DDS) offices who process the initial phase/medical portion of disability claims: Severe under staffing of SSA workers at all levels of the program Claimants waiting for weeks or months to get appointments, and hours to be seen by caseworkers at Social Security field offices Extraordinary wait times between the different phases of the disability claims process Very little or no communication between caseworkers and claimants throughout the disability claims process before decisions are made. Employees being rude/insensitive, not returning calls, not willing to provide information to claimants or not having the knowledge to do so Complaints of lost files and in some states, case files being purposely thrown in the trash rather than processed properly Security Breaches—Complaints of having other claimants information improperly filed/mixed in where it doesn't belong and other even worse breaches Fraud on the part of DDS/OHA offices, ALJ's, IME's—purposely manipulating or ignoring information provided to deny claims, or doctors stating that they gave medical exams to claimants that they never did. Claimants being sent to doctors that are not trained properly, or have the proper credentials in the medical field for the illnesses which claimants are being sent to them for. Complaints of lack of attention/ignoring—medical records provided and claimants concerns by Field Officers, IME doctors and ALJ's. Employees greatly lacking in knowledge of and in some cases purposely violating Social Security and Federal Regulations (including Freedom of Information Act and SSD Pre-Hearing review process). Claimants cannot get through on the phone to the local SS office or 800 number (trying for hours even days) Claimants getting conflicting/erroneous information depending on whom they happen to talk to at Social Security—causing confusion for claimants and in some cases major problems including improper payments Proper weight not being given to claimants treating physicians according to SSA Federal Regulations when making medical disability determinations on claims. Complaints of ALJ's “bribing” claimants to give up part of their retro pay (agreeing to manipulation of disability eligibility dates) or they will not approve their claims Poor/little coordination of information between the different departments and phases of the disability process Complaints of backlogs at payment processing centers once claim is approved Federal Quality Review process adding even more wait time to claims processing, increasing backlogs, no ability to follow up on claim in this phase NOTE: These complaints refer to all phases of the SSDI claims process including local field offices, state Disability Determinations offices, CE/IME physicians, Office of Hearings and Appeals, the Social Security main office in MD (800 number).

Fraud/Program Integrity—The Stigma Encountered By Social Security Disability Claimants

SSDI is not welfare, a hand out, reward, golden parachute or jackpot by any means, and most people would be hard pressed to survive on it. Yet, often claimants are treated like criminals—viewed as frauds trying to scam the system, and that the SSA must “weed out” them out by making it as hard as possible to get benefits. Yes, I'm well aware as I write this, that there's some who've abused the system and that's a shame, because it casts a bad light on those who really need this help. The percentage of claims that in fact, aren't legitimate is very miniscule. In March 2009, the average monthly Social Security Disability Insurance (SSDI) benefit was only \$1061.86. Nobody in their right mind would want to go through this process, and end up living in poverty on top of their illnesses, if they could in fact work. I have

heard nothing in these hearings or this hearing today that addresses the fraud on the part of the Federal Government used to deny deserving claimants their benefits. I have heard nothing about the rubber stamping of denials, the tossing out of claimant files, the security breaches of highly sensitive data, the total disregard of overwhelming evidence by claimants treating physicians, subjecting claimants to unnecessary fraudulent CE/IME exams, and the cases of ALJ's "bribing" claimants to give up years of back benefits or they will not approve them. All these things are criminal at best. Most Americans do not know their rights under the law, that they are allowed to get copies of their SSA claim files. If more people exercised this right, they would be horrified to know what was happening behind their backs, and the true perpetrators of fraud would come to light, in a major way. The SSA currently spends way more resources to evaluate cases (Federal Quality Review Process) that are approved, more than any that are denied unjustly.

Electronic/Internet VS In Person/Paper Filing Of Disability Claims

If a person files a claim online rather than filing in person, the claimant is not allowed to submit crucial medical records and documentation that is necessary to speed up and adequately process a claim in a timely manner. We always encourage claimants to submit as much information as possible at the onset of filing, so that SSA workers do not have to spend extra time hunting down medical records etc and can get their claims resolved faster. We believe it is important to help SSA workers to help us in order to streamline the process, and for the hearing backlog problem to be resolved. Online/internet filing does not give claimants the opportunity to do this. In closing, in spite of my own horrible experience, I have vowed to do everything humanly possible to get total reform of the Social Security Disability program so that nobody else will ever have to endure the hell that I have had to. Since my time is quickly running out, I hope you will join me soon in my quest to accomplish this final lifetime goal, to make our country a better place for our most vulnerable citizens. Thank you for your time and consideration.

Sincerely,

Linda Fullerton—President/Co-Founder—Social Security Disability Coalition

ssdcoalition@hotmail.com Please introduce/support—Fullerton—Edwards Social Security Disability Reform Act: <http://groups.google.com/group/socialsecuritydisabilitycoalition/web/fullerton-edwards-social-security-disability-reform-act>

Statement of National Association of Disability Representatives

The National Association of Disability Representatives is a professional organization comprised of non-attorneys and attorneys who assist people in applying for disability income assistance from the Social Security Administration. Our members help individuals and their families navigate an often complex and lengthy process to demonstrate their eligibility for disability benefits. As advocates for claimants, we want to commend Chairman Tanner, Chairman McDermott, Ranking Member Johnson, Ranking Member Linder, and all of the Members of both Subcommittees who have demonstrated a keen interest in pushing for improvements in the SSA disability determination process, and especially in the unconscionable delays that are part of the current system.

NADR members are on the "front lines" helping persons with disabilities complete applications, gather and submit evidence, and attend Administrative Law hearings with applicants. We see first-hand the serious toll that the long wait for decisions can take on people, most of whom are already experiencing significant life changes, traumas, and hardships. Last year, the average processing time for cases at the hearing level nationwide was 535 days. This year, SSA estimates that the average processing time will be 506 days. While this indicates that things are moving in the right direction, an average waiting time of almost one-and-a-half years is still much too long for claimants to wait for benefits to which they are entitled.

Beyond this unconscionable hearing delay, claimants must again wait for a decision, and if successful, must wait still longer for actual payment of their claims. Those facing grave or terminal illnesses may not live to see the fiduciary promise they paid for each week in their paycheck from their Social Security taxes. Families who need care-givers or other assistance to provide necessary relief and support in helping their loved ones may be burdened for years, trying to balance family needs

without any help. This strains marriages, parent/child relationships, and impoverishes people at a time when their need is greatest.

As an illustration of the hardship real people have suffered as a result of the hearing backlog, following are stories of claimants represented by NADR members:

- Stella, age 52, was in a motor vehicle accident and suffered severe trauma to the left side, including her arm, leg and foot. She had no real useful ability on that side, and also had COPD, PTSD and severe depression. She applied for benefits in August 2006 and was finally approved after a hearing on June 31, 2008, but not before she was forced out of her home and robbed of all her possessions while living on the street.
- Marie, age 46, suffered from seizures and cirrhosis. She filed for benefits in June of 2006. She was in a coma in the hospital for almost a month before she died of liver failure on February 27, 2009. Her favorable on-the-record decision was dated March 4, 2009, too late to help Marie.
- David filed concurrent claims for Social Security Disability Insurance Benefits and Supplemental Security Income disability benefits on November 9, 2004, alleging onset of disability on June 15, 2004. Medical records indicated David suffered from diabetes mellitus, hypertension, hypotension, chronic anemia, arterial calcification of his left lower extremity and chronic diarrhea. The initial claim was denied on February 25, 2005. Upon reconsideration, the claim again was denied on June 24, 2005. An ALJ hearing was requested July 22, 2005. On March 13, 2008, nearly 3½ years after David filed his initial claim, a fully favorable decision was issued. Unfortunately, at that point David had been dead for almost a year and a half.
- Charlene, age 45, had previously been in SSDI payment status. After trying unsuccessfully to return to work, she reapplied and currently is waiting for a hearing that is not expected to be scheduled for at least a year. After being denied initially and awaiting Reconsideration (her second level of appeal), she had a serious suicide attempt. No state transitional assistance is available to her and she is losing her home due to nonpayment of rent. Recently she was in a motor vehicle accident that caused severe brain injury. Charlene's only option at this point is to enter a nursing home as she can't afford to live at home with help.

Amazingly, these stories are happening to individuals who are "insured" for disability, having paid their Social Security taxes, including those that fund SSA disability benefits. Most assume that these benefits will only be needed at retirement. Yet, when accidents or illness strike, people reasonably expect to receive the critical support that disability payments can offer. And, they most certainly expect to get it within a reasonable timeframe. Unfortunately, many Americans are not finding their government reliable in this arena.

We applaud Congress' recent efforts to address the backlog. For FY 2008, Congress appropriated—for the first time in 15 years—\$148 million more than the President's budget request for SSA administrative expenses. The FY 2009 omnibus appropriations bill provided SSA with more than \$700 million over the FY 2008 level. And the American Recovery and Reinvestment Act of 2009 provided SSA with an additional \$500 million to handle the increase in retirement and disability applications due to the economic downturn, as well as funds to replace its old and outdated National Computer Center.

While these are important steps, sustained increases in funding over several years are needed to get the backlog under control. The President has requested \$11.6 billion for SSA's administrative expenses for FY 2010, a 10 percent increase over FY 2009. NADR strongly supports the President's request. We believe this level of funding is necessary in order for SSA to truly have an impact on the disability backlog, while continuing to carry on other related administrative functions to serve beneficiaries and applicants.

That said, it will take more than additional funding to address the issues SSA faces as a result of the dwindling resources and increased workload it has sustained over the past decade. As a member of the Consortium for Citizens with Disabilities' Social Security Task Force, NADR was a signatory on testimony presented to the Subcommittees by Task Force Co-Chair Peggy Hathaway, and supports the recommendations for improving the disability-claims process and eliminating the backlog included in that testimony.

In particular, we want to bring to the Subcommittees' attention the need to make permanent the fee demonstrations in the Social Security Protection Act of 2004 (SSPA), P.L. 108–203. These programs were designed to improve access to representation for claimants applying for Social Security disability and Supplemental Security disability benefits, and have proven effective over time. Section 303 of the Act established a demonstration project to allow withholding and direct payment of fees

to eligible non-attorney representatives. Section 302 authorized the withholding and direct payment of fees in Supplemental Security Income cases. Both programs are scheduled to sunset on March 1, 2010.

Fee Withholding for Qualified Non-Attorney Representatives

Section 303 of the SSPA established a demonstration program to examine the effectiveness of non-attorney representatives who qualify for fee withholding. To qualify for the program, non-attorney representatives must possess a bachelor's degree (or equivalent experience); prove they carry up-to-date malpractice insurance coverage at all times; undergo a criminal background check; and pass an exam developed by Administrative Law Judges that tests their knowledge of the Social Security disability system. Participants also must complete a minimum of 12 hours of qualifying continuing education courses dealing specifically with Social Security disability matters during the initial 18-month period and complete 24 hours of instruction in each subsequent 2-year period. Pursuant to Title III of the Act, the Government Accountability Office (GAO) released a report in October 2007 analyzing the performance of non-attorney representatives in disability cases before the SSA (GAO-08-05).

As part of its study, GAO surveyed both claimants and Administrative Law Judges on representatives' expertise, and examined available SSA records to analyze representatives' caseloads. The study results indicated that non-attorney representatives who met the criteria for fee withholding demonstrated levels of knowledge and success rates at least equal to that of practicing attorneys.

Key points in the GAO study include the following:

- Non-attorneys eligible for fee withholding have the most experience representing disability claimants and are most likely to specialize in disability representation;
- Most eligible non-attorneys had at least a college degree; approximately one-quarter had prior experience as an SSA employee, and another quarter had experience working as a paralegal or in a legal setting;
- Administrative law judges expressed equal satisfaction with the performance of attorneys and eligible non-attorneys on key elements of disability representation, including submission of all relevant evidence, knowledge of applicable laws and regulations, and case knowledge;
- Judges expressed satisfaction with the implementation of the demonstration project, and some went on to say that "non-attorneys tend to be better prepared and more familiar with the details of their cases than attorneys";
- The judges surveyed did not view lack of legal experience as an obstacle, as long as the non-attorney representative had a demonstrated competence of the disability claims process: "Many of these judges expressed the view that experience in disability representation rather than formal legal training is the key to effective representation, or that it is not necessary to have a law degree to effectively represent disability claimants."

The positive responses GAO received from judges and claimants alike about the effectiveness of eligible non-attorney representatives demonstrate that lack of a law degree is not an obstacle to successful representation of disability claimants—and should not be an obstacle to fee withholding.

Disability representatives can only receive a fee when the claim results in a favorable determination. The demonstration program to provide fee withholding for non-attorney representatives has been extremely effective in improving access to qualified representatives for claimants. Just as important, many NADR members work with claimants from the time of filing the initial application. This serves not only to expedite valid claims, but also to provide counseling that can weed out inappropriate cases before they enter the system. Once a claimant does enter the system, qualified representatives who understand the requisite objective documentary needs can assist the claims examiner and adjudicators to gather this critical information in a timely manner. All this leads to savings of time and resources.

The demonstration program to provide fee withholding for non-attorney representatives has been extremely effective in improving access to qualified representatives for claimants while saving administrative costs, and most importantly, time.

Withholding and Direct Payment of Fees in SSI Cases

Section 302 of the SSPA amended Section 1631(d)(2) of the Act to extend the Title II attorney fee withholding and direct payment procedures to claims under Title XVI of the Act. This authority will not apply to claims for benefits with respect to which the claimant and the representative enter into an agreement for representation after February 28, 2010. Because this provision has increased opportunities for SSI

claimants to obtain representation, NADR supports making this provision permanent.

Increasing and Indexing the Fee Cap

Finally, NADR supports H.R. 1093, legislation introduced by Rep. John Lewis (D-GA) to raise the current fee cap from \$5,300 to \$6,264.50—which is what it would have been had it been adjusted for inflation since the last increase in 2002. We also vigorously support the bill's provision calling for ongoing annual COLA adjustments to the cap. If enacted, these changes will help to assure that there is a knowledgeable, experienced pool of representatives available to represent claimants.

Conclusion

For all these reasons, NADR urges Congress to act this year to make permanent both demonstration programs. They have demonstrated their effectiveness in improving access to qualified representation for claimants while saving the system tax dollars and time, and helping in a small, but very meaningful, way to reduce the backlog. We also urge swift congressional action to enact H.R. 1093, legislation to increase and index the fee cap.

We appreciate the opportunity to present our views on ways to reduce the social security backlog. Our goal is to help our clients get the assistance they need in the most efficient way possible. We have a long way to go in transforming SSA's disability program into a more timely and responsive safety net, but your leadership and attention gives many of us reason to hope for improvements. We look forward to continuing to work with Congress and with SSA Commissioner Michael Astrue to assure that SSA is able to provide people with disabilities the benefits to which they are entitled in a timely fashion.

Statement of National Council on Disability

I am pleased to write to you on behalf of the National Council on Disability (NCD), an independent federal agency, to submit for the record the executive summary of our 2005 report entitled *"The Social Security Administration's Efforts to Promote Employment for People with Disabilities: New Solutions for Old Problems."* We are making this submission in order to be considered part of the testimony for the March 24, 2009 joint hearing of the Subcommittee on Income Security and Family Support and the Subcommittee on Social Security entitled "Eliminating the Social Security Disability Backlog."

NCD is composed of 15 members, appointed by the President with the consent of the U.S. Senate. The purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, and that empower individuals with disabilities to achieve economic self-sufficiency, independent living, and integration into all aspects of society. To accomplish this, we gather stakeholder input, review federal programs and legislation, and provide advice to the President, Congress and governmental agencies. Much of this advice comes in the form of timely reports and papers NCD releases throughout each year.

In light of the subject matter of Tuesday's hearing on the disability application backlogs, we respectfully submit a summary of our 2005 report on Social Security Administration programs to assist in providing greater context to the topic at hand. The executive summary of that report is attached. The Council believes that the severity of the backlogs continues to negatively influence individuals who may otherwise consider leaving the Social Security Disability Income (SSDI) rolls in pursuit of employment. With the knowledge that they will once again have to face lengthy wait periods to access financial assistance should their attempts to work be unsuccessful, many likely believe that the risks outweigh the benefits of making the attempt in the first place. While a correlation between the two is difficult to prove, the sad fact that less than 1% of the individuals living on SSDI ever return to gainful employment is indicative of the value they place on this program of support.

We applaud the Social Security Administration for the progress it has made in addressing the backlog that has impacted thousands of qualified individuals with disabilities each year who depend on the system when their lives are disrupted due to disability. However, we also recognize that there is much more to be done before the system will operate as Congress intended.

If you have any questions about this submission or any matter related to disability policy, please contact NCD Executive Director Michael Collins by phone at (202) 272-2004, or email at mcollins@ncd.gov. On behalf of NCD, thank you for your

leadership in focusing attention on this important topic. I also thank you for the opportunity to submit this statement for the record.

Respectfully,

John R. Vaughn
Chairperson

The Social Security Administration's Efforts to Promote Employment for People with Disabilities: New Solutions for Old Problems

National Council on Disability
November 30, 2005

National Council on Disability
1331 F Street, NW, Suite 850
Washington, DC 20004

Read the full report at:

<http://www.ncd.gov/newsroom/publications/2005/ssa-promoteemployment.htm#exec>

Executive Summary

Americans with disabilities remain underemployed, despite the fact that many are willing and able to work. Although the Social Security Administration (SSA) has instituted a number of incentives to reduce the numerous obstacles to employment faced by its Supplemental Security Income (SSI) and Social Security Disability Insurance (DI) beneficiaries, such efforts have had little impact because few beneficiaries are aware of these incentives and how they affect benefits and access to healthcare.

Introduction to the Problem

Social Security beneficiaries with disabilities must spend months or even years convincing SSA that they are unable to work as a condition of eligibility. Yet, upon their receipt of benefits, SSA begins to communicate to beneficiaries that work is an expectation for them. Congress and SSA have developed a variety of work incentives and special programs designed to encourage beneficiaries to attempt to obtain and sustain employment. Yet SSA's efforts to eliminate work disincentives have often added to the complexity of the entire program, confusing beneficiaries and making them leery of any actions that might unknowingly jeopardize their benefits.

Current SSA benefit amounts are quite small and merely allow beneficiaries to live at a basic subsistence level. SSI resource limits make it very difficult to accumulate the financial resources necessary to move toward economic self-sufficiency. Tying eligibility for Medicaid or Medicare to eligibility for SSA benefits forces individuals with high-cost medical needs who could otherwise work to choose between pursuing a career and retaining the medical insurance that sustains their very lives.

The fear of losing benefits and medical insurance through an unsuccessful employment attempt starts well before adulthood with SSI beneficiaries. Many SSI recipients first apply for benefits as children while enrolled in public schools. These individuals often remain on the rolls well into adulthood, with very few transitioning from high school into substantial employment after graduation (GAO, 1996b; GAO, 1998b). Failure to focus on Social Security and other public benefits during transition is not only a missed opportunity, but harm may be caused when students and family members are not educated or prepared for the effect of earnings on cash benefits and medical insurance (Miller and O'Mara, 2003).

There is also the problem with poor educational attainment of DI beneficiaries who enter the disability system later in life. Efforts to help this population return to work are stymied by their lack of education and marketable job skills—particularly in today's highly competitive information economy. It is now more important than ever that people of all ages have access to higher education and the financial means with which to pay for training and education (Moore, 2003).

Response of Congress and the Social Security Administration to the Problem

Well aware of the enormity and seeming intractability of this problem, Congress and SSA have initiated multiple efforts to promote employment and return to work among SSA beneficiaries. In recent years, a number of work incentives for SSI and DI beneficiaries have been implemented, allowing individuals to keep more of their earnings while retaining their benefits. Work incentives are aimed at reducing the risks and costs associated with the loss of benefit support and medical services as a result of returning to work. Some of the most commonly used incentives are Section 1619(a) and (b) provisions; impairment-related work expenses (IRWE); trial

work period (TWP); Plan for Achieving Self-Support (PASS); extended period of eligibility (EPE); and continued payment under a vocational rehabilitation program.

However, despite efforts by SSA and the Federal Government that have led to more favorable conditions for returning to work, most SSI and DI beneficiaries continue to stay on the disability rolls. The work incentives offered by SSA remain largely underutilized; in March 2000, of the total number of eligible working beneficiaries, only 0.3 percent were using PASS, 2.8 percent were using IRWEs, 7.5 percent were receiving Section 1619(a) cash benefits, and 20.4 percent were receiving Section 1619(b) extended Medicare coverage (SSA, 2000). The major reasons cited for the extreme underutilization of these work incentives by beneficiaries were (1) few beneficiaries knew that the work incentives existed, and (2) those who were aware of the incentives thought they were complex, difficult to understand, and of limited use when entering low-paying employment (GAO, 1999).

The Office of Program Development and Research (OPDR) and the Office of Employment Support Programs (OESP) under the Deputy Commissioner for Disability and Income Security Programs are primarily responsible for the implementation of multiple components of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIA). The TWWIA provides a number of new program opportunities and work incentives for both SSI and DI beneficiaries, including the Ticket to Work (TTW) and Self-Sufficiency Program; development of a work-incentives support plan through the creation of national network of Benefits Planning, Assistance, and Outreach (BPAO) programs; and new work incentives, including expedited reinstatement (EXR) of benefits and postponement of continuing disability reviews.

The National Council on Disability's Study of the Problem

It is not known whether the new TWWIA programs will have any more success than past attempts by SSA to impact the employment rate and earnings of beneficiaries. What is clear is that there has not been, in recent times, a comprehensive, research-based examination of the practices that are most likely to support the employment of SSI and DI beneficiaries. This study has been undertaken in response to the need for such a comprehensive analysis. The study was designed to address four research questions:

- What are the evidence-based practices that promote the return to work of working-age beneficiaries of DI and SSI programs?
- What policy changes are needed, given recent trends in program participation and employment?
- Are there proven and documented practices that work better for some populations of people with disabilities and not others?
- Which factors ensure that documented and evidence-based practices could be adapted/ adopted by SSA and other entities that seek to ensure the employment of people with disabilities? Which factors prevent adaptation/adoption?

A four-step approach was taken to implement the study. First, a comprehensive literature synthesis was completed through a review of published and unpublished literature. Second, detailed structured interviews were conducted with key stakeholders, including SSA beneficiaries, federal SSA officials, representatives of other federal agencies, consumer and advocacy organizations, service organizations, community service providers, and business representatives. Third, a preliminary list of findings, evidence-based practices, and recommendations based on the literature review and structured interviews was used to develop seven topic papers. These papers were used to facilitate discussion and obtain reaction from participants who were invited to a consensus-building conference at the end of January 2005. Individuals with disabilities (including current and former SSI and DI beneficiaries), advocacy organizations, service providers, and policymakers who attended the conference had the opportunity to further develop the recommendations that appear throughout the report.

Major Findings of the Study

Purpose and Mission of SSA's Disability Benefit Programs

Our nation's current disability benefit programs are based on a policy principle that assumes that the presence of a significant disability and lack of substantial earnings equates to a complete inability to work. The current SSA eligibility determination process thwarts return-to-work efforts, because applicants are required to demonstrate a complete inability to engage in substantial gainful activity (SGA) in order to qualify for benefits. The definition fails to recognize that, for many consumers, disability is a dynamic condition. The length of the application process in our current programs actually contributes to the ineffectiveness of our return-to-work efforts and our inability to intervene early in the disability process.

For DI individuals, lack of a gradual reduction in benefits as earnings increase and lack of attachment to the DI and Medicare programs after an individual has maintained employment for an extended period of time make return to work unfeasible. For SSI beneficiaries, the program's stringent asset limitations thwart efforts toward asset development and economic self-sufficiency. Inconsistencies in program provisions lead to confusion and inequities for beneficiaries of both programs.

Beneficiary Perspective and Self-Direction

To receive benefits, applicants must characterize their situation as an inability to work long-term. They must demonstrate that they are unable to work in any significant way. Once they are determined to be eligible for disability benefits, beneficiaries face a host of complex program rules and policies related to continuing eligibility for cash benefits and access to healthcare. Many beneficiaries are confused or uninformed about the impact of return to work on their life situation and have shied away from opportunities to become self-sufficient through work.

Beneficiaries report that their experience with SSA is often unfavorable. Insufficient staffing has led to long lines and poor services. Misinformation is frequent, and mistrust common. Local SSA field office staff members are overburdened with accurate and timely processing of post-entitlement earnings reporting, which often leads to overpayments to beneficiaries. Beneficiaries do not trust SSA to make appropriate and timely decisions. There is prevalent fear that work attempts would result in either a determination that the disability had ended or the need to repay benefits.

SSA has implemented many legislative changes, program modifications, training initiatives, and automation efforts in the past 15 years to improve its customer service. Although efforts to streamline processing and improve customer service should be lauded, they have not significantly improved beneficiaries' ability to direct and control their own careers.

Income Issues and Incentives

A multitude of rules regarding employment income, continued eligibility for disability benefits, waiting periods, earnings reporting, management of benefit payments, and management of assets (among many others) come into play once an individual is determined to be eligible for DI or SSI. SSA rules regarding employment and income are such that many beneficiaries will actually be worse off financially if they work full time. Disincentives to employment in the current benefits programs include a sudden loss of cash benefits as a result of earnings above the SGA level for DI beneficiaries. Despite a number of programs that are designed to encourage asset building among SSI beneficiaries, it remains very difficult for beneficiaries to save and accumulate resources under SSI, which contributes to long-term impoverishment and dependence on public benefits.

Over the past decade, SSA has devoted considerable resources to promoting employment and return to work among SSI and DI beneficiaries. The agency has aggressively implemented a number of new initiatives authorized under the TWWIIA, such as the Ticket to Work and Self-Sufficiency Program, the BPAO program, area work incentive coordinators, and Protection and Advocacy for Beneficiaries of Social Security. It has modified program rules to provide increased work incentives to beneficiaries, such as the EXR and protection from continuing disability review provisions of TWWIIA, indexing the SGA threshold, and increasing the level of earnings allowed during the Trial Work Period (TWP). The agency has also launched or is planning to initiate a number of demonstrations that will test the efficacy of new modifications to work incentives within the DI program and services targeted toward youth with disabilities. Yet, while SSA has taken steps to improve its return-to-work services through the provision of work incentives, these efforts are hampered by the underlying program rules that were designed for individuals assumed to be permanently retired from the workforce and individuals who were viewed as unable or unlikely to work in the future.

Coordination and Collaboration Among Systems

Expansion of the disability programs and the poor employment rates of adults with disabilities have become major concerns for SSA and disability policymakers across the country. Too often, the alarming growth of the Social Security disability rolls has been represented and perceived as SSA's problem to solve in isolation, when in fact it is a larger societal problem with myriad complex causes. Receipt of Social Security disability benefits is merely the last stop on a long journey that many people with disabilities make from the point of disability onset to the point at which disability is so severe that work is not possible. All along this journey, individuals encounter the policies and practices of the other systems involved in dis-

ability and employment issues. When these systems fail to stem the progression of disability or work at cross-purposes with one another to prevent successful employment retention or return to work, it is the Social Security disability system that bears the eventual brunt of this failure. Any meaningful effort to slow down or reverse this relentless march toward federal disability benefits will require significant and sustained collaboration and coordination among SSA and the other federal agencies with a stake in developing disability and employment policy.

The complex obstacles to employment faced by SSA beneficiaries require a comprehensive set of solutions. New approaches must be identified that emphasize beneficiary control of career planning and the ability to access self-selected services and supports. Public and private healthcare providers must develop new collaborations and new approaches to combining coverage from multiple sources to improve program efficiencies. SSA must continue to work with the Rehabilitation Services Administration (RSA) and the Department of Labor (DOL) to improve implementation of the TTW program and identify new approaches that will overcome the traditional inability of SSA beneficiaries to benefit from services provided by the nation's employment and training programs. Secondary and postsecondary educational institutions must emphasize benefits counseling and financial management training as the foundation for beneficiary self-direction and economic self-sufficiency. Federal agencies and the business community must realize that collaborative approaches to incorporating beneficiaries into the workforce are needed as a way to reduce dependence on federal benefits while simultaneously enhancing the productivity and competitiveness of large and small business.

Recommendations

A total of 38 specific recommendations have been developed in the areas of Beneficiary Perspective and Self-Direction, Income Issues and Incentives, and Coordination and Collaboration Among Multiple Public and Private Systems. The recommendations are presented and justified in Chapters III, IV, and V of the report, and a complete list is provided in Chapter VI. The key recommendations resulting from the study are summarized below.

Beneficiary Perspective and Self-Direction

Customer Service—SSA should take immediate steps to improve the services provided to beneficiaries by improving the accessibility of SSA field offices and Web sites; redesigning field office personnel roles, staffing patterns and work assignments; continuing efforts to automate work reporting procedures; and enhancing outreach efforts to beneficiaries.

Ticket to Work Program—Congress and SSA should address current shortcomings in the TTW program by (1) expanding Ticket eligibility to include beneficiaries whose conditions are expected to improve and who have not had at least one continuing disability review (CDR), childhood SSI beneficiaries who have attained age 18 but who have not had a redetermination under the adult disability standard, and beneficiaries who have not attained age 18; (2) modifying the TTW regulations to ensure that Ticket assignment practices do not violate the voluntary nature of the program and beneficiary rights to grant informed consent; and (3) implementing a strong national marketing program to inform beneficiaries about TTW and other SSA programs.

Facilitate Beneficiary Choice—Congress should authorize and direct SSA, the Rehabilitation Services Administration (RSA), the Centers for Medicare and Medicaid Services (CMS), the Department of Housing and Urban Development (HUD), and the Department of Labor Employment and Training Administration (DOLETA) to develop and implement an integrated benefits planning and assistance program that coordinates resources and oversight across several agencies that enables beneficiaries to access benefit planning services within multiple federal systems. Congress should also authorize and direct these agencies to consider changes to the existing BPAO initiative to improve the accuracy and quality of services provided to individual beneficiaries.

Reduce SSA Overpayments to Beneficiaries—Congress and SSA should implement a series of procedural reforms to reduce overpayment to beneficiaries by increasing the use of electronic quarterly earnings data and automated improvements to expedite the processing of work activity and earnings; piloting the creation of centralized work CDR processing in cadres similar to PASS and Special Disability Workload Cadres; and enhancing efforts to educate beneficiaries on reporting requirements, the impact of wages on benefits, and available work incentives.

Eliminate the Marriage Penalty—Congress and SSA should undertake a complete review of the SSI program and make program modifications that eliminate the financial disincentive to marriage inherent in the present program, including amend-

ing the current Title XVI disability legislation to modify the manner in which 1619(b) eligibility is applied to eligible couples.

Income Issues and Incentives

Ease the SGA Cash Cliff for DI Beneficiaries—Congress should modify the current Title II disability legislation to eliminate SGA as a post-entitlement consideration for continued eligibility for Title II disability benefits and provide for a gradual reduction in DI cash benefits based on increases in earned income.

Reduce Restrictions on Assets for SSI Beneficiaries—Congress should direct SSA to (1) develop and test program additions and regulatory modifications that will enable SSI beneficiaries to accumulate assets beyond existing limits through protected accounts and other savings programs, and (2) change current program rules and work with other federal agencies to modify and expand the value of individual development account (IDA) programs to SSA beneficiaries.

Decrease the Complexity of the DI/SSI Program Rules Governing Income and Resources—Congress should direct SSA to (1) simplify regulatory earnings definitions and wage verification processes so that they are consistent across the SSI and DI programs, and (2) direct SSA to modify regulations related to the treatment of earnings in the DI program by applying the same rules currently applied in the SSI program.

Coordination and Collaboration Among Multiple Public and Private Systems

Health Care Systems—Centers for Medicare and Medicaid Services (CMS) and SSA should work together closely to (1) modify existing program regulations in order to uncouple Medicare and Medicaid coverage from DI/SSI cash payments; (2) identify and eliminate the many employment disincentives currently built into the Medicaid waiver, Medicaid buy-in, and Health Insurance Premium Payment (HIPP) programs; (3) expand benefits counseling services to include the full range of financial education and advisement services; and (4) work collaboratively with public and private insurance providers and business representatives to design public-private insurance partnerships that will expand access to healthcare for individuals with disabilities.

Vocational Rehabilitation (VR) System—SSA should modify TTW program regulations to allow the SSA's traditional VR cost reimbursement program to carry on as a parallel program to the Employment Network (EN) outcome or outcome-milestone payment mechanisms, and ensure that an EN is able to accept Ticket assignment from a beneficiary, refer that individual to the VR agency for needed services, and not be required to reimburse the VR agency for those services.

Federal Employment and Training System—Congress, SSA, and the Department of Labor should undertake an analysis of the impact of allowing DOL One-Stop Career Centers to receive cost reimbursement payments for successfully serving beneficiaries under the TTW program, evaluate the impact of the Workforce Investment Act (WIA) performance standards on beneficiary participation in WIA programs, and design and test a set of waivers that will assist beneficiaries in accessing and benefiting from WIA core and intensive services, as well as individual training accounts.

Educational System—Congress should direct SSA to work with the Department of Education (ED) to (1) ensure that benefits planning and financial management services are available to the transition-aged population; (2) expand the current student earned income exclusion (SEIE) and the Plan for Achieving Self-Support (PASS) to encourage involvement of SSA beneficiaries in postsecondary education and training; and (3) implement a policy change that would disregard all earned income and asset accumulation limits for beneficiaries who are transitioning from secondary education to postsecondary education or employment for at least one year after education or training is completed.

Employers, Business Community, and Private Insurance Industry—Congress should direct SSA and the Department of the Treasury to (1) evaluate the possible effects of a disabled person tax credit as a means of increasing the use of disability management programs in business to prevent progression of injured and disabled workers onto the public disability rolls, and (2) collaborate with Department of Labor's Employment and Training Administration (DOLETA), the Small Business Administration (SBA), and the Rehabilitation Services Administration (RSA) to develop and implement an employer outreach program targeted toward small and mid-size businesses.

Statement of Renée B. Jubrey

I am writing to you with great concern regarding the matter of the Social Security Vocational Expert Rate Raise. As a Vocational Expert I have provided testimony in court for the Office of Disability, Adjudication and Review (ODAR) specific to individual documented limitations, past relevant work and numbers of jobs in the local economy as well as the nation. The judges I work for continue to use my services as it helps them make an informed decision and fewer cases are remanded. They have told me my participation in these hearings is invaluable, assisting in clearing the much touted backlog and I could be scheduled more than I am now.

Vocational Experts working for ODAR have not had a raise in our rates since 1972 and therefore the current rate of pay is substantially below what we are paid in the private sector. Although we continue to work for this amount, it is only with the thought that a sense of fair play and justice will prevail. The new rates were provided to us, and some of us even had contracts mailed to us, only to be rescinded. We had been told that the language of the contract needed to be altered and they would be redistributed and "up and running" by 1/1/09. Since then we have waited patiently for the continuing resolution to play out, and now that we have seen the budget approved for Social Security we remain hopeful. If the purpose of increasing the Social Security budget in 2009 as well as 2010 is to reduce the backlog, then Vocational Experts will play a crucial role in this endeavor.

The Social Security Commission funded a panel a few years back to conduct a needs assessment related to current administration needs. The panel report (found at) made clear the need for Vocational Experts as well as Medical Experts to receive an increase in fees. I feel that we Vocational Experts have been more than patient and beseech you to address this on our behalf. I am a member of the International Association of Rehabilitation Professionals (IARP) and we hope for your support in this matter.

Sincerely,

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